

New Rules for the Marketing and Sales of Medicare Private Plans During Open Enrollment

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky

ADVISORY OPINION 2008-06

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the “Department”) on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: PRODUCERS SELLING MEDICARE PRESCRIPTION DRUG PLANS OR MEDICARE ADVANTAGE PLANS

FROM: SHARON P. CLARK, COMMISSIONER

RE: NEW RULES FOR THE MARKETING AND SALES OF MEDICARE PRIVATE PLANS DURING OPEN ENROLLMENT (November 15 – December 31, 2008)

DATE: NOVEMBER 24, 2008

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New federal rules for the marketing and sales of Medicare private plans went into effect on Oct. 1, 2008, pursuant to the Medicare Improvements for Patients and Providers Act of 2008. All producers must continue to abide by state law and regulatory provisions regarding producer activity, including state producer licensing laws and requirements, and state consumer protection laws.

In addition to state producer licensing laws, federal law requires that Medicare private plans:

- Must use state-licensed producers.
 - Must comply with state appointment laws.
 - Must report to the state the termination of any producer, including the reasons for such termination, in accordance with state law.
 - Must ensure that producers are trained annually on Medicare rules and regulations specific to the plan products they intend to sell.
 - Must comply with state requests for information about the performance of a licensed producer as part of a state investigation.

In addition to state law and regulatory provisions regarding producer activity, federal law also prohibits the following activities relating to the marketing of Medicare private plans:

- No cash or other monetary rebates as an inducement for enrollment.
 - No offer of gifts to potential enrollees, unless they are of nominal value (\$15) and are offered to all potential enrollees whether or not they enroll.
 - No meals to potential enrollees, regardless of value.

- No door-to-door solicitations or other unsolicited means of direct contact, include cold-calling a beneficiary without the beneficiary initiating the contact.
- No marketing, or cross-selling, of non-health care related products during a Medicare prescription drug plan or Medicare Advantage plan sales activity or presentation.
- No marketing of any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented, prior to the appointment.
- No marketing of any health related lines of business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment.
- No sales presentations, or distribution or acceptance of enrollment forms, in health care settings such as provider offices (except in common areas).
- No sales presentations, or distribution or acceptance of plan applications, at educational events.

s/ Sharon P. Clark
Sharon P. Clark, Commissioner
Kentucky Department of Insurance

On this 24th day of November, 2008.