

08-B-07

To: NC Producers Selling Medicare Prescription Drug Plans or Medicare Advantage Plans

From: Agent Services Division

Date: November 21, 2008

Re: NEW RULES FOR THE MARKETING AND SALES OF MEDICARE PRIVATE PLANS DURING OPEN ENROLLMENT NOV. 15 – DEC. 31, 2008

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
- 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.

The Department will investigate allegations of agents using improper and unlawful marketing techniques. Any agent found to be in violation will be subject to adverse disciplinary and licensure proceedings. The regulatory authority over insurance agents who are selling and marketing insurance products in North Carolina would fall under the jurisdiction of the Department of Insurance pursuant to North Carolina General Statutes 58-33-5, 58-33-10, 58-33-26, 58-33-46, 58-33-120 and other applicable laws and regulations.

Please contact Agent Services Division at (919) 807-6800 if you have any questions.