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TO: Disability/Health Insurance Producers and Carriers

FROM: William W. Deal, Director

SUBJECT: Producer and Carrier Marketing of Medicare Advantage and Prescription Drug Plans

The Idaho Department of Insurance (the Department) has entered into an agreement with the Centers for Medicare & Medicaid Services (CMS) to ensure that Prescription Drug Plans (PDPs) and Medicare Advantage plans, including plans with prescription drug coverage (collectively MAs), are correctly marketed and sold by licensed insurance producers.

This bulletin includes but is not limited to Idaho licensed insurance carrier and producer marketing of PDPs and MAs to beneficiaries known as "dual eligibles." Dual eligibles are beneficiaries who are eligible for Medicare Part A and/or Part B and some form of Medicaid benefit.

While the vast majority of Idaho licensed insurance producers are honest and provide a valuable service to their customers, including dual eligibles, the Department has received some troublesome reports of inappropriate and aggressive insurance producer activity regarding enrollment of dual eligibles into PDPs or MAs. Unlike other Medicare beneficiaries, dual eligible individuals may switch PDPs or MAs at any time during the year and are not limited to the annual and open-enrollment periods established for the general Medicare-eligible population. This ability to switch plans year-round has led some insurance producers to target the dual eligible population in order to gain commissions that may be generated by switching a dual eligible individual from one plan to another. The Department is aware of incidents wherein some producers have taken advantage of this situation, resulting in problems for vulnerable individuals. The purpose of this bulletin is to identify some of the acceptable and unacceptable marketing practices with respect to PDPs and MAs under state and federal law.

The Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110-275) (*See also*, 42 C.F.R. Parts 422 and 423 (CMS 4131-F) (42 U.S.C. 1305, *et seq.*) enacted by Congress in the fall of 2008, provides protections for beneficiaries through increased oversight of marketing behavior. MIPPA provides very specific guidelines for marketing activities, which includes producer behavior. The Department is working with CMS to ensure that Idaho carriers and producers who sell PDPs and MAs follow these guidelines by sharing information concerning the actions of the plans and producers. In addition, CMS instituted a comprehensive surveillance and enforcement strategy for these plans to ensure that they are in compliance with both federal and state laws.

The list below sets forth prohibited and inappropriate behavior of producers and companies selling PDP or MA products as provided by federal law, primarily 42 CFR § 422.2268. It also details some of the conduct that is considered appropriate producer behavior. The Department will take action against a producer who is engaged in inappropriate marketing and sales activity that violates any provision of title 41, Idaho Code, or other applicable state law.

Medicare Advantage organizations—and therefore producers—are prohibited from:

- Soliciting potential enrollees door-to-door.
- Stating that they are from Medicare or using the term “Medicare” in a misleading manner. For example, a producer cannot state that he or she is endorsed by Medicare, is calling on behalf of Medicare, or that Medicare directed them to call or see the beneficiary.
- Sending unsolicited emails.
- Conducting outbound marketing calls, unless the beneficiary requested the call or the beneficiary is an existing client. Producers are allowed to call their existing clients to discuss new plan options.
- Approaching or soliciting beneficiaries in common areas, for example, parking lots, hallways, and lobbies.
- Calling or visiting a beneficiary who attended a sales event, unless the beneficiary gave express permission.
- Marketing non-health related products, such as annuities and life insurance, to prospective enrollees during PDP or MA sales activities or presentations. This is considered cross-selling and is prohibited.
- Contacting friends or family of clients under the premise that they were “referred” to the prospective customer. Producers may leave cards behind for clients to provide to friends or family, but the “referred” beneficiary must contact the producer directly.
- Offering gifts to potential enrollees of more than \$15, based on the retail purchase price of the product.
- Making unsolicited contact with beneficiaries under the guise of selling a non-PDP or non-MA product where the conversation turns to PDPs or MAs. For example, a producer

may not begin by selling a Medicare Supplement plan and then turn the conversation to PDP or MA products.

- Conducting sales activities in healthcare settings except in appropriate common areas. Appropriate common areas include hospital or nursing home cafeterias, community or recreational rooms, and conference rooms. Producers are prohibited from conducting sales presentations and distributing or accepting enrollment applications in areas where patients primarily intend to receive healthcare services. Inappropriate areas include waiting rooms, exam rooms, hospital patient rooms, dialysis centers and pharmacy counter areas.
- Providing meals to potential enrollees at sales presentations.
- Engaging in marketing or sales activities at an educational event.

Producers are required to:

- Clearly identify the types of products that will be discussed before marketing to a potential enrollee. (A producer must initially meet with a beneficiary to discuss specific lines of business.)
- Prior to any marketing appointment, reach an agreement with the beneficiary as to the “scope of the appointment,” and that agreement must be documented. For example, if a beneficiary attends a sales presentation and schedules an appointment, the producer must obtain written documentation that is signed by the beneficiary agreeing to the products that will be discussed during the appointment.
 - Additional products may not be discussed unless the beneficiary requests the information.
 - Any additional lines of business that are not identified prior to the appointment will require a separate appointment.
 - Subsequent appointments may not be scheduled until 48 hours after the initial appointment.
- Producers are only permitted to schedule appointments with beneficiaries residing in long term care facilities upon request.

Appropriate producer behavior:

- Producers may call beneficiaries who have expressly given them permission for a sales agent to contact them, for example by filling out a business reply card or asking a Customer Service Representative (CSR) to have an agent call them. The permission applies only to the entity from whom the beneficiary requested contact for the duration of that transaction or as indicated by the beneficiary.
- Producers may initiate a phone call to confirm the appointment that has already been agreed to by a beneficiary but may not change the scope of the appointment without appropriate documentation.

- Sales presentations to groups of beneficiaries do not require documentation of the beneficiary agreement because they are not personal/individual sales events.
- While producers are no longer permitted to provide meals, they may provide refreshments and light snacks to prospective enrollees at sales presentations.

Any questions regarding producer activities can be directed to the Consumer Affairs Section of the Department at (208) 334-4250 or toll free at 1-800-721-3272. In addition, the Department's Senior Health Insurance Benefits Advisors (SHIBA) office is an information resource for seniors that provides assistance in making informed decisions about Medicare and other healthcare options. SHIBA's telephone number is (208) 334-4250 or toll free at 1-800-247-4422.