



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
ONE COMMERCE PLAZA  
ALBANY, NEW YORK 12257**

George E. Pataki  
Governor

Howard Mills  
Superintendent

**Circular Letter No. 7 (2006)  
March 28, 2006**

**TO: All Licensed Health Insurance Producers**

**RE: Medicare Part D Marketing**

**STATUTORY REFERENCE: Medicare Prescription Drug Improvement and Modernization Act,  
Pub. Law No. 108-173 (2003) (MMA)**

Since October 1, 2005, marketing activity for the new Medicare prescription drug benefit, Medicare Part D, has been permissible. According to the Centers for Medicare and Medicaid Services (CMS), only state-licensed insurance producers may engage in marketing activity. The Medicare Modernization Act does not preempt producer licensing laws. Thus, state law and regulatory provisions regarding producer activity apply to the marketing of Medicare Part D.

CMS has received complaints about alleged misconduct by licensed insurance producers with regard to Medicare Part D marketing. CMS will refer complaints that it receives about producers licensed in this state to the New York Insurance Department for investigation and possible disciplinary action. This circular letter reminds licensed producers that when they solicit and sell Medicare Part D coverage, in addition to being subject to the provisions of the Consolidated Federal Regulations implementing Medicare Part D, they are also subject to all the laws and regulations of this state, including those relating to misrepresentation, misleading statements and incomplete comparison, churning, cold lead advertisement, and high pressure sales tactics.

The new Medicare Part D benefit has proven to be confusing for the Medicare beneficiary. Producers should not take advantage of the Medicare beneficiary's lack of knowledge in order to offer or sell other insurance products.

Implying or suggesting that an agent is affiliated or associated with Medicare, or that a particular product has been approved or endorsed by Medicare, is misrepresentation. The Department will take enforcement action against any individual who misrepresents his or her status or affiliation, or the products being offered.

Among the practices prohibited under Federal regulations, are the following:

- Conducting door-to-door solicitation or marketing Medicare Part D, alone or in concert with other products, prior to receiving an invitation from the member to provide assistance in his or her home.

Contacting any beneficiary where it is known that he or she has refused outreach assistance or has not responded to a telephone call or follow-up letter until at least six months following the outreach attempt.

- Conducting sales presentations and distributing and accepting enrollment applications in the areas where patients primarily intend to receive health care services, such as pharmacy counter areas, waiting rooms, exam rooms and hospital patient rooms.
- "Cherry picking" healthier patients for enrollment.

Suggesting or implying that an individual must drop an existing Medicare Supplement plan in order to qualify for the Part D benefit is misrepresentation.

Allegations of misconduct related to Part D marketing will be thoroughly investigated by this office. Any proven misconduct will be prosecuted under the laws of this state relating to producer licensing, unfair and deceptive insurance practices or other relevant law.

Questions regarding this letter may be directed to:

Merline Smith  
Principal Insurance Examiner  
Consumer Services Bureau  
New York State Insurance Department  
One Commerce Plaza  
Albany, NY 12257  
Phone: (518) 473-7894  
e-mail to Ms. [Merline Smith](#)

Very truly yours,

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Salvatore Castiglione  
Assistant Deputy Superintendent and Chief  
Consumer Services and Licensing Bureaus