

January 30, 2006

To: All Persons Engaged in Marketing  
Part D and Medicare Advantage Plans  
From: John Morrison, Commissioner of Insurance  
Re: Marketing Medicare Part D and Medicare Advantage Plans

The Montana State Auditor's Office (Department of Insurance) has received complaints about alleged misconduct by persons in connection with the marketing of Medicare Part D prescription drug plans being offered through private carriers pursuant to the Medicare Modernization Act (MMA). Therefore, we are reminding all insurance producers and other persons selling Part D and Medicare advantage products of their obligations under Montana law.

According to the Centers for Medicare and Medicaid Services (CMS), the MMA does not preempt state producer licensing laws. **Persons marketing Medicare Part D or Medicare Advantage products must have a Montana health insurance producer's license, and licensed producers must comply with Montana laws and regulations, including those relating to prohibitions against misrepresentation, churning, and twisting.** For instance, it may be inappropriate or harmful to sell a Part D product to a person who has already enrolled in a Medicare Advantage Plan or who has access to an employee plan with better prescription drug coverage. [Title 33, Chapter 18, MCA] CMS will refer complaints it receives about producers licensed in this state to the Department of Insurance.

In Montana, any person who "sells, solicits, or negotiates insurance" is required to have a Montana producer's license. [§ 33-17-201, MCA] "'Negotiate' means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers." [§ 33-17-103(17)]

Producers who sell or replace Medicare supplement coverage are reminded that ARM 6.6.519 (Standards for Marketing) and 6.6.520 (Appropriateness of Recommended Purchase and Excessive Insurance) apply to them. Misleading representations or incomplete comparison of insurance products is illegal. All producers recommending the purchase or replacement of any Medicare supplement policy shall make reasonable efforts to determine the appropriateness of the recommended purchase or replacement.

**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.**

If you have any questions, please e-mail Alicia Pichette, Deputy Insurance Commissioner, at [apichette@mt.gov](mailto:apichette@mt.gov).