

3901-8-09

Solicitation and sale of medicare supplemental accident and health policies.

(A) Purpose

The purpose of this rule is to safeguard the interests of medicare-eligible persons in the solicitation and sale of any type of medicare supplemental sickness and accident health insurance ~~policies~~ policy by providing for the regulation of the solicitation and sale of medicare supplemental accident and health insurance policies; and to assure that medicare-eligible persons are not subjected to unfair or deceptive acts or practices in the solicitation and sale of medicare supplemental accident and health insurance policies by defining additional unfair or deceptive acts or practices in this rule.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code, providing that the superintendent of insurance shall adopt, amend and rescind rules and make adjudications necessary to discharge the superintendent's duties and exercise the superintendent's powers under Title 39 of the Revised Code; section 3923.332 of the Revised Code, providing that the superintendent shall adopt reasonable rules to establish minimum standards for advertising and marketing practices for medicare ~~supplement~~ supplemental policies and certificates; and section 3901.21 of the Revised Code, providing that the enumeration in sections 3901.19 to 3901.26 of the Revised Code, of specific unfair or deceptive acts or practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the superintendent of insurance to adopt rules to implement said section, or to take action under other sections of the Revised Code.

(C) Definitions

- (1) "Medicare-eligible person" means any person eligible for either medicare part A or medicare part B, pursuant to Title XVIII, ~~U.S. Code~~ of the federal Social Security Act (42 U.S.C. 1395 et seq.).
- (2) "Medicare program" refers to the benefits available to medicare-eligible persons, pursuant to Title XVIII of the Social Security Act, codified in ~~42 U.S.C. 1395 ff~~ Title XVIII of the federal Social Security Act (42 U.S.C. 1395 et seq.).

(D) Unfair or deceptive acts or practices defined

It shall be deemed an unfair or deceptive act or practice to commit or perform any of the following:

- (1) Any implication, either verbal or written, which conveys the impression that any medicare supplemental insurance program being offered by a company; or agent ~~or broker~~ is affiliated with or sponsored by the federal government, the social security administration, the centers for medicare and medicaid services, or the department of health and human services. No solicitation, advertisement, or marketing material shall be used in the state that fails to include the following or a substantially similar disclaimer: "Not connected with or endorsed by the U.S. government or the federal medicare program."
- (2) Any of the following unsolicited contacts with a medicare-eligible person:
 - (a) Door-to-door solicitation including leaving information such as a leaflet, flyer, or door hanger at a residence, or leaving information such as a leaflet or flyer on someone's car;
 - (b) Approaching individual prospective applicants in common areas (e.g., parking lots, hallways, lobbies, sidewalks, etc.);
 - (c) Telephonic or electronic solicitation including leaving electronic voicemail messages, text messages or direct social media messages;
 - (d) These prohibitions on marketing through unsolicited contacts do not extend to ~~mail and other media (e.g., advertisements, direct mail)~~; advertisements through mass communications including direct mail, or unsolicited contacts with prospective applicants with whom the entity or insurance agent has a business relationship, regardless of the method of communication.
- (3) Any representation by an agent ~~or broker~~ to the effect that such person is a "counselor"; "advisor" or similar designation, for any association or group of medicare-eligible persons, which obscures the actual role of such agent ~~or broker~~ with respect to the solicitation or sale of such insurance.
- (4) Any act for the purpose of inducing an applicant or prospective applicant to sign any form, application or document in blank.
- (5) Failure by the agent ~~or broker~~ to state affirmatively, verbally and in writing, the following:
 - (a) That the person making the solicitation or sale is, in fact, an insurance agent ~~or broker~~;

- (b) That the agent ~~or broker~~ is making the solicitation or sale on behalf of an insurance company or insurance companies, which company or companies must be identified to the ~~senior citizens~~ medicare-eligible persons;
 - (c) That the medicare-eligible person may verify the information required to be stated in paragraphs (D)(5)(a) and (D)(5)(b) of this rule by contacting the Ohio department of insurance;
 - (d) That the medicare-eligible person may contact the agent ~~or broker~~ making the solicitation or sale at both an address and telephone number provided by the agent ~~or broker~~;
 - (e) That the medicare-eligible person may contact the insurance company or insurance companies on behalf of which the solicitation or sale was made at an address and telephone number provided by the agent ~~or broker~~;
 - (f) That the agent ~~or broker~~, and the insurance company, have no connection or affiliation with, and are not in any way sponsored by, the federal or state government, the social security administration, the centers for medicare and medicaid services, or the department of health and human services;
 - (g) That the medicare-eligible person has the option, if he or she purchases a medicare supplemental insurance policy, of paying his or her premium(s) directly to the insurance company.
- (6) Any inaccurate or misleading description of the benefits provided by either the medicare program or the medicare supplemental policy being offered for sale.
- (7) Any attempt by an insurance company, or agent ~~or broker~~ to arrange a solicitation or sales interview with an applicant or prospective applicant by implying or conveying in any way the impression that such insurance company, or agent ~~or broker~~ has been authorized by the federal government, the medicare program or the social security administration to contact said applicant or prospective applicant for the purpose of reviewing, modifying or discussing his or her existing insurance program. Such prohibition is also extended to any statement or act which implies or conveys in any way the impression that such insurance company, or agent ~~or broker~~ has access to official records of the federal government, medicare program or social security administration, pertaining to the applicant's or prospective applicant's

insurance program.

- (8) Use of any title or initials by the agent ~~or broker~~ which ~~implies or conveys~~ imply or convey the impression that such agent ~~or broker~~ is affiliated with or sponsored by the federal government, medicare program or social security administration. Such prohibition also applies to the use of trade names by individual agents ~~or brokers~~.
- (9) ~~The making of any~~ Any misrepresentation or incomplete comparison by the insurance company, ~~or agent or broker~~, by commission or omission, for the purpose of inducing or tending to induce a medicare-eligible person to purchase, amend, lapse, forfeit, change or surrender insurance.

(E) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

Effective:

Five Year Review (FYR) Dates: 08/19/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3901.041, 3901.21, 3923.332
Rule Amplifies: 3901.19 to 3901.26, 3923.332
Prior Effective Dates: 5/14/1979, 4/5/2007, 11/11/2011, 6/22/2012