

MEDIGAP MARKETING STANDARDS AND MACRA CHANGES

The Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”) was signed into law on April 16, 2015. MACRA prohibits the sale of Medigap policies and riders that cover Part B deductibles to “newly eligible” Medicare beneficiaries. “Newly eligible” Medicare beneficiaries are defined as those individuals who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

Because MACRA prohibits the sale of Medicare supplement coverage that covers the Part B deductible to those individuals who first become eligible for Medicare on or after January 1, 2020, both insurance companies and agents doing business in the Medicare supplement marketplace may not engage in any marketing activities that violate this prohibition. In addition, significant changes to Medicare supplement requirements as is the case with MACRA may result in improper marketing and sales activity that can cause harm to Medicare supplement consumers. The purpose of this bulletin is to address such improper activity.

Federal minimum standards for Medigap insurance include the NAIC Medigap Model Regulation which establishes “Marketing Standards” in Section 20. The “Marketing Standards” that are incorporated by reference in the federal minimum Medigap standards of the Social Security Act (section 1882) apply to an “issuer” and its “producers.”

The purpose of this bulletin is to remind those who operate in the Medicare supplement marketplace of marketing and sales activity that violate the law [*cite the appropriate state law*]. In addition to the acts or practices prohibited by the state’s Unfair Trade Practices law, the following acts or practices are prohibited under the Federal minimum standards:

- “Twisting.” Knowingly making **any misleading representation or incomplete or fraudulent comparison** of any insurance premiums, policies or issuers.
- “High pressure tactics.” Employing any method of marketing to induce the purchase of insurance through force, fright, threat, or undue pressure to purchase or recommend the purchase of insurance.
- “Cold lead advertising.” Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose is solicitation of insurance.

The effects of the MACRA changes on the marketing and sale of Medicare supplement insurance coverage in the state are as follows:

- MACRA does not close previous blocks of business.

- Those persons who became eligible for Medicare prior to January 1, 2020, and who have a policy that covers the Part B deductible may keep that policy so long as they continue to pay premium.
- Those persons who became eligible for Medicare prior to January 1, 2020 and want to change coverage on or after January 1, 2020 are eligible for policies that cover the Part B deductible or policies that do not cover Part B deductible so long as they meet underwriting standards or are eligible for a guaranteed issue policy.
- Those persons who become eligible for Medicare on or after January 1, 2020, may not be sold a Medicare supplement policy that covers the Part B deductible.

Those insurance companies or agents that provide information contrary to the above or are engaging in acts or practices that are prohibited as outlined above, are in violation of the law. Some may assert that MACRA changes will cause premium rates for their current plan to increase disproportionately, however, without a proper factual basis such assertions are misleading and would be inappropriate and prohibited.

Potential Penalties:

Any person who “knowingly” sells or issues a Medigap insurance policy in violation of the federal minimum standards is subject to a federal civil money penalty of up to \$25,000 on the issuer (\$15,000 on a seller who is not the issuer) for each individual violation (per each individual Medigap insurance policy). See 42 CFR 1003.1100 – 1120 (October 2018). In addition, violators are also subject to state fines and penalties for violations of applicable state insurance laws.

If there are any questions on the above, please contact [*insert appropriate state information*].