



# ODI

Ohio Department  
of Insurance

John R. Kasich, Governor

Mary Taylor, Lt. Governor/Director

# Predatory Sales Practices Identified With The Sale Of Medicare Products

# What Is Medicare?

Medicare is federal health insurance for people 65 and older.

Medicare is also available to individuals under the age of 65 who have certain disabilities.



**ODI**  
Ohio Department  
of Insurance

# Medicare Coverage

While traditional Medicare is offered by the federal government, Medicare permits private insurance carriers to offer certain Medicare products to senior citizens.

Before an insurance company can sell Medicare products, however, they must first enter into a contract with the Centers For Medicare and Medicaid Services (CMS).

Prior to entering into a contract with an insurance company, CMS will ensure the products being offered meet specific guidelines.



# How Medicare Products Are Sold

Insurance companies use insurance agents to market Medicare Part D, Medicare Advantage and also Medicare Supplemental Insurance to senior citizens.

In order to solicit a product on behalf of an insurance company, the agent must first be properly licensed. They must additionally be appointed by the company.

Insurance companies are responsible for the acts of the agents they appoint.



# How Insurance Agents Are Compensated



Insurance agents are compensated by the insurance companies they represent, and they receive a commission for every Part D and Medicare product they sell.

The insurance agent usually receives a substantial commission the first year the policy is in place, and a slightly lower commission each year the policy remains in effect.



**ODI**  
Ohio Department  
of Insurance

# CMS Medicare Marketing Guidelines



[www.CMS.gov](http://www.CMS.gov)

In order to ensure Medicare products are marketed appropriately to consumers, CMS created Medicare marketing guidelines for all companies and agents to follow.

The following slides provide a brief summary of several guidelines that must be followed when marketing Medicare Advantage and Part D products.

The CMS Medicare Marketing Guidelines can be found in full at [www.CMS.gov](http://www.CMS.gov).



**ODI**  
Ohio Department  
of Insurance

# CMS Medicare Marketing Guidelines

- Companies and agents cannot market non-health related products to prospective enrollees when selling Medicare Advantage or Part D plans.
- Promotional activities or items offered by a company or agent must be of nominal value, be offered to individuals regardless of enrollment and cannot be considered a health benefit.
- Companies and agents may not provide or subsidize meals at sales/marketing events.



**ODI**  
Ohio Department  
of Insurance

# CMS Medicare Marketing Guidelines

- Companies and agents cannot contact a consumer through electronic communications unless the individual has agreed to receive those communications.
- Companies and agents may not market through unsolicited direct contact, including but not limited to, door to door solicitation, approaching beneficiaries in common areas, by telephone or electronic solicitation, by calling former enrollees who have disenrolled or current enrollees who are in the process of voluntarily disenrolling, or calling beneficiaries who attended a sales event, unless the beneficiary gave express permission at the event for a follow up call.



# CMS Medicare Marketing Guidelines



- Educational events for prospective enrollees may not include any sales activities for the distribution of marketing materials or the distribution/collection of plan applications and must be advertised as “educational.”
- Companies and agents are required to notify CMS of all marketing/sales events prior to advertising the event or within seven calendar days prior to the event’s scheduled date, whichever is earlier.



# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

In order to safeguard the interests of Medicare eligible consumers, the Ohio Department of Insurance adopted a rule regarding the solicitation of Medicare Supplemental policies to ensure Medicare eligible persons are not subjected to unfair or deceptive acts or practices.



**ODI**  
Ohio Department  
of Insurance

# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

According to the rule, it shall be deemed an unfair or deceptive act or practice to commit or perform any of the following:

(1) Make any implication, in verbal or written form, which conveys the impression that any Medicare supplemental insurance program being offered by a company, agent or broker is affiliated with or sponsored by the federal government, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health & 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."



# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(2) Have any of the following unsolicited contact 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 solicitation including leaving electronic voicemail messages.



# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(3) Make any representation to the effect that the agent or broker 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) Commit any act for the purpose of inducing an applicant or prospective applicant to sign any form, application or document in blank.



**ODI**  
Ohio Department  
of Insurance

# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(5) Fail to state affirmatively, verbally and in writing:

- That they are an insurance agent or broker.
- That they are making the solicitation or sale on behalf of a specific insurance company(ies), which must be identified.
- That the Medicare-eligible person may contact the Ohio Department of Insurance and verify the agent's license and appointment status and the status of the insurance company.
- That the Medicare-eligible person may contact them at a specific address or telephone number, as well as the insurance company.



# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(5) Fail to state affirmatively:

- That the agent or broker, and the insurance company, has 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 (CMS), or the Department of Health & Human Services.
- 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.





# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(7) Any attempt by an insurance company, 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, 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. This includes any statement which implies the insurance company or agent has access to official records about the person's insurance program.



**ODI**  
Ohio Department  
of Insurance

# O.A.C. 3901-8-09 - Solicitation Of Medicare Supplemental Policies

(8) Use of any title or initials by the agent or broker which implies or conveys 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 misrepresentation or incomplete comparison by the insurance company, 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.



# Complaints Associated With The Sale Of Medicare Products

While most insurance agents are reputable, a small percentage of insurance agents use questionable sale tactics to sell Medicare products to senior citizens.

In light of the above, the Ohio Department of Insurance has received complaints regarding the manner in which agents are marketing Medicare products to senior citizens.



**ODI**  
Ohio Department  
of Insurance

# Complaints Associated With The Sale Of Medicare Products

Complaints received allege agents:

- Solicited Medicare products door-to-door.
- Called beneficiaries and claimed they were with the Centers for Medicare and Medicaid Services (CMS) or the Ohio Department of Insurance.
- Used aggressive sales tactics.
- Removed beneficiaries from traditional Medicare without their knowledge.



**ODI**  
Ohio Department  
of Insurance

# Complaints Associated With The Sale Of Medicare Products

- Enrolled beneficiaries in plans they couldn't afford.
- Misled enrollees to believe their physician or hospital accepts their plan.
- Enrolled beneficiaries without their consent or by using deceptive sales tactics.



# “Churning”

Some agents will convince customers that they need to change insurance carriers each year, despite the fact there may be no need to switch plans. This sales tactic, known as “churning,” is used by agents to maximize their commissions.

**Remember:** Insurance agents receive a large commission for first year business so the more new policies they sell, the higher their commission will be.



**ODI**  
Ohio Department  
of Insurance

# The ODI Fraud & Enforcement Division



**ODI**  
Ohio Department  
of Insurance

# The Role Of The ODI Enforcement Division

The Enforcement Division investigates allegations of agent misconduct in order to determine if an insurance agent has violated an insurance law or rule.

If the Enforcement Division obtains evidence to show an agent has violated the Ohio Revised Code, the agent may face a fine or suspension of their license. If the act is severe enough, the agent may also face having their license revoked.



**ODI**  
Ohio Department  
of Insurance

# Information Needed To Follow Up On A Medicare Complaint

- The name of the agent and any additional identifying information (company/agency, name, address, telephone number, etc.).
- The name(s), address(es) and contact number(s) of the consumer(s).
- The date the incident in question took place.
- A description as to what specifically took place.
- The name(s), address(es) and contact number(s) for any witnesses.



# Contact Information

Ohio Department Of Insurance  
Fraud & Enforcement Division  
50 W. Town Street, Suite 300  
Columbus, Ohio 43215

Fraud Hotline: 1-800-686-1527

[www.insurance.ohio.gov](http://www.insurance.ohio.gov)

Follow us on Facebook and Twitter!



Facebook.com/OhioDepartmentofInsurance



@OHInsurance



**ODI**  
Ohio Department  
of Insurance

# Comments / Questions



**ODI**  
Ohio Department  
of Insurance