



The State of New Hampshire Insurance Department

21 South Fruit Street, Suite 14
Concord, NH 03301
(603) 271-2261 Fax (603) 271-1406
TDD Access: Relay NH 1-800-735-2964

Christopher R. Nicolopoulos
Commissioner

David J. Bettencourt
Deputy Commissioner

Bulletin

Docket No: INS 22-003-AB

To: All Insurance Health Insurers, Agents, Producers & Brokers

From: Christopher R. Nicolopoulos, Esq., Commissioner C.R.N.

Date: January 25, 2022

**Re: Medicare Supplement Advertising and Lead Generating
Devices Require Approval**

Medicare Supplement Insurance Advertising Approval

The Department is aware that some Medicare Supplement Insurance (“MedSupp”) advertising materials are being disseminated to the public without first being approved by the New Hampshire Insurance Department (“NHID”). NH RSA 415-F:7 states: “Every issuer of Medicare supplement insurance policies or certificates in this state shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of this state for review or approval by the Commissioner to the extent it may be required under state law.” NH Code of Administrative Rules Ins 2603.17 allows the Commissioner, at his discretion, to require insurers to file MedSupp advertising with the NHID, prior to use. To the extent it has been unclear, the Commissioner requires such filings of all MedSupp advertising to protect the public and effectively regulate this advertising.

Pursuant to Ins 2603.02(b), all advertisements, no matter who produced them, shall be the “responsibility of the insurers benefitting directly or indirectly from their dissemination.” Ins 2603.12(m) requires that “all advertisements used by agents, producers, brokers or solicitors of an insurer shall have prior written approval of the insurer before they may be used.” It is the responsibility of each insurer to monitor and control this issue. See Ins 2603.02(b). As a result, to comply with New Hampshire law, insurers must make sure their agents, producers and brokers are aware of and comply with New Hampshire’s MedSupp advertising requirements, including NHID approval, prior to the dissemination of this advertising.

NH RSA 400-A:15,III provides for penalties up to \$2,500 per violation for insurers or producers in violation of New Hampshire insurance laws. NHID will not immediately assess penalties against licensees currently not in compliance; however,

insurers and producers must be in compliance within 30 days of the publication of this bulletin.

Lead Generating Device

A “lead generating device” means “... any communication directed to the public that, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance.” Ins 2603.03(m). Lead generating devices are advertisements subject to Ins 2603 that must first be approved before they are disseminated to the public. NH RSA 415-F:7; Ins 2603.03(a)(1); Ins 2603.17. A new MedSupp advertising checklist to determine whether a particular advertisement is a lead generating device is available at https://www.nh.gov/insurance/lah/lah_checklists.htm to assist licensees with regulatory compliance. If an advertisement is a lead generating device, it will need to, at a minimum, comply with New Hampshire Ins Guideline 6-A (1)(19)¹ as well as the other provisions of Ins 2603, et seq.

The Commissioner is concerned that producers, agents and brokers are committing the prohibited practice of *cold lead advertising* through the use of unapproved “lead generating devices” that do not meet the requirements of Ins 2603. These items are advertisements and must be approved by NHID before they are disseminated. NH RSA 415-F:7. The Commissioner is also concerned that when producers contact consumers identified through a lead generating device they are not disclosing that fact, as required by Ins 2603.12(n).

The prohibited practice of cold lead advertising, or the use of noncompliant lead generating devices, is expressly prohibited and must cease immediately. If you have questions or comments relating to this bulletin, please contact Jason Dexter, Administrator of Life and Health Compliance, Forms Examination Unit, New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord, NH 03301. Telephone: (603) 271-3041; Fax: (603) 271-1406; Email: jason.g.dexter@ins.nh.gov.

¹ This Guideline is incorporated into Ins 2603 in the Appendix of those rules and is based upon the National Association of Commissioners (“NAIC”) Guidelines for rule interpretation of advertisements of Medicare Supplement Insurance from the NAIC’s Model Rule 660. The Guideline states “A television, radio, mail or newspaper advertisement, or lead generating device that is designed to produce leads either by use of a coupon, a request to write or to call the company, or a subsequent advertisement prior to contact must include information disclosing that an insurance agent may contact the applicant if such is the fact.”