ROBERT L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lt. Governor

JAMES V. MCMAHAN, III
Acting Commissioner

P. TODD CIONI
Associate Commissioner
Compliance & Enforcement

To:　　　　**Maryland Licensed Producers**

Re:　　　　**Marketing Medicare Advantage & Prescription Drug Plan Products**

Date:　　　　**November 29, 2005**

Bulletin:　　　　**Life & Health 05-17**

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("MMA") established a new voluntary prescription drug benefit under Part D of Title XVIII of the Social Security Act.   MMA also created new Medicare Advantage plans, which modified the Medicare Plus+Choice plans. Medicare Part D plans that participate in Medicare Advantage must offer one option that includes prescription drug coverage. Individuals eligible for these two new Medicare plans will be able to obtain prescription drug coverage through federally designated commercial and/or non-profit prescription drug plans ("PDPs") or Medicare Advantage plans offering qualified prescription drug coverage ("MA-PDs").

Organizations approved to sponsor Medicare Part D plans in Maryland under a contract with the Federal Centers for Medicare & Medicaid Services (CMS) have been permitted to market their plans in the State since October 1, 2005. Enrollment in such organizations began as of November 15, 2005 and coverage for enrollees will become effective January 1, 2006.

Be advised that Maryland producer licensing laws are not preempted by MMA. Because the organizations offering Medicare Part D plans are insurers, only state-licensed insurance producers may engage in the sale, solicitation or negotiation of PDPs or MA-PDs for compensation in this State. Compensation, in this case, is not limited to receiving commissions, but includes salary or fees as well.   Hence any individual who receives any form of compensation for the sale, solicitation or negotiation of PDPs or MA-PDs in this State must be licensed as an insurance producer in the State.

The Administration does not require those individuals who provide only "enrollment assistance" to be licensed producers. Enrollment assistance is considered the act of providing information about the benefit and the available plans and helping the beneficiary fill out

enrollment forms. Individuals engaged in enrollment assistance may not, however, receive compensation that is related to the enrollment of members in a particular plan.

Also be advised that all insurance producers are expected to fully comply with all laws and regulations of this State, including those relating to honesty and trustworthiness and the prohibitions against misrepresentation and churning in connection with the sale of insurance products. CMS has notified the Maryland Insurance Administration that it has received complaints about alleged misconduct by licensed insurance producers with regard to the marketing of Medicare Part D. CMS will refer complaints it receives about insurance producers licensed in this state to the Administration. Note that the Administration views with a high degree of skepticism the use of a lead relating to Part D marketing activity to cross-sell other insurance products of any type for which the Medicare beneficiary may not be suited. The Administration will thoroughly investigate any such allegation of insurance producer misconduct pursuant to Maryland State producer licensing laws. The Administration will take appropriate administrative action against any insurance producer found to be in violation of these laws or regulations.

Consumers may determine if an individual is licensed by the Administration at the Administration's website at www.mdinsurance.state.md.us. From the main page select *PRODUCER SERVICES* and then select *PRODUCER SEARCH*.

Questions relating to this Bulletin may be addressed to John Riggle – Chief, Agent Enforcement @ (410) 468-2230.

_____
P. Todd Cioni, Associate Commissioner
Compliance and Enforcement Unit
Maryland Insurance Administration