



COLORADO

**Department of
Regulatory Agencies**

Division of Insurance

DRAFT Proposed New Bulletin No. B-4.1XX

Regarding Insurer Payment of Commissions for Medicare Products

I. Background and Purpose

The purpose of this bulletin is to clarify the Division of Insurance's (the Division) perspective on unfair trade practices that lead to manipulation of the insurance market and withholding or denying access to products from Medicare-eligible consumers, and the applicability of Colorado Revised Statutes §§ 10-3-1103 and 10-3-1104 to such practices.

The Division has become aware of conduct by certain insurers offering Medicare Advantage and Medicare Supplement products in this state which, if verified, may violate Colorado law. Reports indicate that some carriers have attempted to restrict access by removing the enrollment application from their website, encouraging producers to avoid selling their products, or changing or discontinuing producer compensation. The Division views such practices, if used to impede consumer access to approved products or to manipulate producer behavior in a way that disadvantages eligible beneficiaries, as an unfair trade practice or method of competition under Colorado Revised Statutes §§ 10-3-1103 and 10-3-1104, which prohibits any method of competition or act in the business of insurance that is unfair or deceptive.

Bulletins are the Division of Insurance's (Division) interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin applies to all carriers and producers who offer any health insurance plans to Coloradans eligible for Medicare, including Medicare Advantage and Medicare Supplement plans.

III. Division Position

It is an inappropriate and unfair practice, with the potential to harm Colorado consumers, for carriers to restrict access or dissuade consumers from buying a product that was filed to market in Colorado and priced accordingly.

To maintain fair competition in these markets, carriers must:

- make applications for enrollment available and easily accessible in all forms, including printed, on-line on their website, and through their appointed agents for any Medicare Advantage or Medicare Supplement product for sale in Colorado;
- not engage in convincing or suggesting their products not be sold or marketed, or discouraging enrollment in their products; and

- not reduce or eliminate producer compensation for an approved product midyear, except as expressly permitted under its filed and approved compensation schedule.

This bulletin does not compel a carrier to continue selling a product that it has lawfully withdrawn from the market in accordance with applicable federal and state procedures. However, as long as a plan remains approved and offered in Colorado, the carrier must make enrollment reasonably available through customary channels, online, by mail, and through duly appointed producers, and must honor the compensation structure reflected in its approved filings.

Producers are reminded of their duty to act in the best interest of the consumer and assist the applicant in identifying the plan most suited to the consumer's medical and financial circumstances, taking into account provider access, prescription coverage, cost, and affordability.

The Division will closely monitor compliance and may take enforcement action as appropriate under Colorado law against any carrier engaging in practices that manipulate the market or harm consumers.

IV. Additional Resources

Colorado Division of Insurance
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V. History

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