

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 98

(Chair, Finance Committee)(By Request - Departmental -
Insurance Administration, Maryland)

Finance

Health and Government Operations

Health Insurance - Medicare Marketing Rules

This departmental bill requires insurance producers to comply with the federal Centers for Medicare and Medicaid Services' (CMS) Medicare Marketing Guidelines, including prohibitions against door-to-door solicitation, approaching Medicare beneficiaries in common areas, and telephone or electronic solicitation, when soliciting or advertising the sale of Medicare Advantage, Medicare Advantage Prescription Drug, Medicare Prescription Drug (Part D), or Section 1876 Cost plans. Commission of a prohibited act is defined as an unfair and deceptive act or practice in the business of insurance.

Fiscal Summary

State Effect: Enforcement can be handled with existing resources.

Local Effect: None.

Small Business Effect: The Maryland Insurance Administration (MIA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: Title 15, Subtitle 9 of the Insurance Article governs the sale of Medicare supplement policies in Maryland. Carriers may not issue, deliver, or renew a Medicare supplement policy unless it complies with the subtitle. When soliciting the sale of a policy, a carrier or insurance producer may not, among other prohibitions, knowingly offer a policy to an individual not yet eligible for Medicare nor negligently or knowingly

sell a policy that duplicates an existing policy. The Insurance Commissioner may require a carrier that violates the subtitle to cease marketing and/or to comply with the subtitle.

Title 27, Subtitle 2 of the Insurance Article defines and prohibits unfair methods of competition and unfair and deceptive acts or practices in the business of insurance. If the Insurance Commissioner finds that a person has engaged in a prohibited act or practice, the Commissioner must order the person to cease and desist from the act or practice.

Background: CMS' Medicare Marketing Guidelines reflect interpretation of the marketing requirements and related provisions of the federal Medicare Advantage and Medicare Prescription Drug Benefit rules (Chapter 42 of the Code of Federal Regulations, Parts 422 and 423), which apply to Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans, and 1876 Cost plans. The guidelines are subject to change by CMS and include plan/sponsor responsibilities, general marketing requirements, marketing material types and disclaimers, promotional activities, telephonic activities, websites and electronic/social media, marketing and sales oversight, and allowable uses of Medicare beneficiary information.

According to MIA, while CMS has regulatory authority over the *insurers* that issue Medicare plans, it relies on states to enforce insurance producer conduct. MIA's Consumer Education and Advocacy and Compliance and Enforcement units receive complaints regarding alleged improper solicitation of Medicare beneficiaries. The bill is intended to clarify prohibited marketing activities and the Insurance Commissioner's enforcement authority.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - January 10, 2014
mc/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Insurance – Medicare Supplement Act – Marketing Rules

BILL NUMBER: SB 98

PREPARED BY: Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS