

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 508 - L.D. 1271

**An Act to Require a Disclaimer on Promotional Materials for Medicare,
Medicaid and MaineCare Products by Private Entities**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 226 is enacted to read:

CHAPTER 226

**DISCLAIMER ON PROMOTIONAL MATERIALS USING MEDICARE,
MEDICAID OR MAINECARE**

**§1499-G. Disclaimer on promotional materials using Medicare, Medicaid or
MaineCare**

1. Disclaimer. A person may not use any advertisement, solicitation, informational brochure, mailer or other promotional material using the terms "Medicare," "Medicaid" or "MaineCare" unless the material:

A. Includes a disclaimer printed on the top and both front and back of the material in type size no smaller than the largest type size on the material stating "This is an advertisement and solicitation";

B. Contains in a type size no smaller than the 2nd largest type size on the material stating "[Name of person sponsoring the promotional material] is a private company that is not Medicare, Medicaid or MaineCare and is not a governmental agency";

C. Contains in a type size no smaller than the 2nd largest type size on the material any other disclaimer on the material; and

D. Does not use a type color for the disclaimer required in paragraph A that is in grayscale or other faded tone, or a font that does not mimic or is not similar to a font used in an official document from a state or federal agency.

2. Application. The requirements of subsection 1 do not apply to any informational brochure or other material distributed by a person that does not sell or profit from the sale of any insurance product.

3. Rules. The Attorney General may adopt rules to implement this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Violation. A person that fails to comply with subsection 1 commits a violation of the Maine Unfair Trade Practices Act.

Sec. 2. 24-A MRSA §2152-B, sub-§2, as enacted by PL 2007, c. 53, §1, is amended to read:

2. Unfair solicitation methods. It is an unfair trade practice under this chapter for an insurer or producer to:

A. Sell, solicit or negotiate the purchase of health insurance in this State through the use of cold lead advertising;

B. Use an appointment that was made to discuss Medicare products or to solicit the sale of Medicare products in order to solicit sales of life insurance, health insurance or annuity products unless the consumer requests such solicitation and the products to be discussed are clearly identified to the consumer in writing at least 48 hours in advance of the appointment; ~~and~~

C. Solicit the sale of Medicare products door-to-door prior to receiving an invitation from a consumer; and

D. Use an advertisement, solicitation, informational brochure, mailer or other promotional material using the terms "Medicare," "Medicaid" or "MaineCare" that mimics or implies that it is an official document from a state or federal agency.

Sec. 3. 24-A MRSA §2152-C is enacted to read:

§2152-C. Disclosures in printed marketing materials of Medicare products

1. Disclosures. Except as provided in subsections 2 and 3, a person may not use printed materials marketing Medicare products unless the material:

A. Includes a statement printed on the top and both the front and back of the material in type size no smaller than the largest type size on the material stating "This is an advertisement and solicitation";

B. Contains in a type size no smaller than the 2nd largest type size on the material stating "[Name of person sponsoring the promotional material] is a private company that is not Medicare, Medicaid or MaineCare and is not a governmental agency";

C. Contains in a type size no smaller than the 2nd largest type size on the material any other disclaimer on the material; and

D. Does not use a type color for the disclaimer required in paragraph A that is in grayscale or other faded tone, or a font that does not mimic or is not similar to a font used in an official document from a state or federal agency.

2. No disclosure required. The requirements of subsection 1 do not apply to:

A. Informational brochures or other material developed or distributed by a state or federal regulatory agency or a nonprofit organization; or

B. Information related to an existing policy, from a policyholder's insurer, licensed agent or agency of record, including, but not limited to, information for the purpose of

assisting, educating or communicating the status of plan benefits, claims, appeals, grievances or notice of termination.

3. Application. This subsection does not apply to any marketing material that has been filed with and approved by the superintendent, or filed with and approved by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services or filed with the Centers for Medicare and Medicaid Services under that agency's policies allowing for the filing and use of certain marketing materials. Evidence of that approval or filing with the Centers for Medicare and Medicaid Services must be produced upon request of the superintendent.

4. Rules. The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.