COMMONWEALTH OF MASSACHUSETTS
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DIVISION OF INSURANCE

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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2005-08

To: Massachusetts Licensed Producers

From: Julianne M. Bowler, Commissioner of Insurance

Date: October 13, 2005

Re: Responsibilities Associated with the Marketing or Offering of Insured Prescription Drug Plans to Medicare Eligible Persons under Part D of the Federal Medicare Program

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This bulletin is being issued to remind all producers licensed to do business in the Commonwealth of Massachusetts of their statutory obligations with regard to the sale, solicitation or negotiation of insured Prescription Drug Plans (PDPs) marketed or offered to Medicare eligible individuals under Part D of the federal Medicare Program.

As you may be aware, organizations offering PDPs under a contract with the federal Centers for Medicare and Medicaid Services (CMS) for Part D coverage under the federal Medicare Program were permitted to market these PDPs to Medicare recipients beginning October 1, 2005. Under these programs, organizations will be able to offer prescription drug coverage effective January 1, 2006.

As a producer licensed in Massachusetts, you may be participating in the marketing, selling, soliciting or negotiating of one of these PDPs. Please be aware that the Massachusetts producer licensing law is not preempted by the Medicare Modernization Act (MMA) and all producers are expected to fully comply with all laws and regulations of this state, including those relating to the duty of good faith and fair dealing and the prohibitions against misrepresentation and high pressure sales tactics.

NAIC has notified the Division that CMS has received complaints about alleged misconduct by licensed producers with regard to the marketing of Medicare Part D. CMS will refer complaints it receives about producers licensed in this state to the Division. The Division 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. The new Part D benefit is fundamentally confusing for the Medicare beneficiary and it would be unwise for the producer to take advantage of the Part D lead to sell other insurance products to a Medicare beneficiary for which he or she may not be suited. The Division will thoroughly investigate any such allegations of producer misconduct related to the marketing, sale, solicitation or negotiation of Medicare Part D under the Massachusetts state producer licensing statute, M.G.L. c. 175, §§ 162G-X. The Division will take necessary disciplinary action against any producer found in violation of these statutes.

If you have any questions about this bulletin, please contact Diane Silverman-Black, Director of Producer Licensing at (617) 521-7794.