

Misleading Marketing and Advertising

Presentation: May 6, 2022

Michael Anderson

- Michael Anderson is a staff attorney with the Nebraska Department of Insurance and has been with the Department for two years.
- Previously, Michael served as an Assistant Attorney General with the State of Missouri in the Medicaid Fraud Control Unit, and as an assistant prosecuting attorney in Pemiscot County, Missouri.
- Michael graduated from Creighton University in 2011 and from Creighton University School of Law in 2014.

Martin Swanson

- Martin Swanson is the Deputy Director and General Counsel of the Nebraska Department of Insurance.
- He has been with the Department for twenty years and chairs the Improper Marketing of Health Plans working group at the National Association of Insurance Commissioners (NAIC)
- Previously, Martin served as an Assistant Attorney General with the State of Nebraska , a Deputy County Attorney in Platte County, Nebraska and taught prosecutors at the New York Prosecutor Training Institute. He also was the first Nebraskan selected by the National Association of Attorneys General to serve as a Supreme Court Fellow at the U.S. Supreme Court.
- Martin graduated from Creighton University in 1992 and from Creighton University School of Law in 1995

Statute

Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is **untrue, deceptive, or misleading**.

-Neb. Rev. Stat. § 44-1525 (2)

Bulletins

NOTICE

State of Nebraska
Life & Health Insurance Department

TO: All Companies Writing Health Insurance in Nebraska

FROM: Bruce R. Ramge, CPCU, CIE
Director of Insurance

DATE: October 25, 2018

SUBJECT: Advertisement of Sickness and Accident Policies

As a reminder to insurers marketing sickness and accident policies in Nebraska, Title 210 NAC Ch. 14, 003.02 requires that an insurer maintain a system of control over the content, form and methodology of advertisements. The insurer's responsibility is to monitor any entity that advertises its products.

The intent of Title 210 NAC Ch. 14 (Regulation) is to prohibit deceptive tactics in the marketing of these plans. The Nebraska Department of Insurance continues to receive reports of calls made to consumers by phone numbers that are masquerading as another caller by falsifying the number that appears on a recipient's caller ID display. This is commonly called "spoofing." These spoofed phone numbers have actually been employed by entities marketing insurance products. The use of spoofed phone numbers is a violation of the Regulation.

Marketing through lead generators or other entities that purport to market sickness and accident policies, via email, internet website or other forms of social media, also are subject to this Regulation. The insurer who employs these services must maintain oversight over these entities.

Questions concerning this notice may be directed to Martin Swanson, Health Policy Administrator, at martin.swanson@nebraska.gov or to Laura Arp, Life and Health Administrator, at laura.arp@nebraska.gov.

States may vary widely on what they issue as guidance outside statute, this may include such things as:

- Bulletins
- Guidance Documents
- Notices

Refer to your state statutes on what is considered a guidance document, and to what violations of those documents may result in.

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Administrative Code

006.01 The format and content of an advertisement of an accident or sickness insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive whether an advertisement has a capacity or tendency to mislead or deceive **shall be determined by the Director of Insurance from the overall impression that the advertisement** may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.

006.02 Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

-210 Neb. Admin. Code, ch. 14, § 006

Who is Responsible?

003.02 Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

-210 Neb. Admin. Code, ch. 14, § 003

Why is This Important?

As regulators of the insurance industry, it is our duty to protect current and potential policyholders from harm, especially in situations that vulnerable markets are targeted. In general, it has long been understood that insurance contracts and policies are complex, in some cases necessarily so. This has led to an imbalance of power in the insurer/insured relationship.

Specific groups to watch for:

- Sick
- Elderly
- Disabled



These groups are particularly susceptible to forced assumptions that could be the result of dishonest or misleading materials.

MISLEADING MARKETING MATERIALS

What to Look For

- Anything forward facing towards potential policyholders that could cause confusion, such as:
 - Misleading wording in advertisements
 - Misleading company names
 - Use of authority figures
 - Use of major company logos
 - Conflict with written and spoken communications
 - Spoofing (Incorrect Phone Numbers on Caller ID)
 - Unsolicited Contact (i.e. Social Media)
 - Attempts to obtain personal information

Misleading Wording

T-2	2020 BENEFIT INFORMATION FOR NEBRASKA CITIZENS ONLY	2020
<p>As a resident of Nebraska, you are entitled to more benefits not provided by government funds. You now have access to a 2020 state-regulated program which will pay 100% of all final expenses up to \$35,000. Return this postage paid card within 5 days to request this new benefit information.</p>		
<p>Please Respond By Jun. 12, 2020</p>		
	<i>Complete and return the information below:</i>	
	NAME 	AGE 77
SPONSOR 	AGE 62	
STREET ADDRESS 		
PHONE (with Area Code) 		
<small>Not affiliated with or endorsed by any government agency.</small>		
		G33A3T
NI 1138940112648		
<small>To opt out of future mailings please visit dispostout.com and enter this 9 digit code: 915-01-002.</small>		

Misleading Wording

This card was referred to our office through our Consumer Affairs Division and was being used by an agent to market several plans, not focused simply on a specific pre-need plan as the card seems to indicate. After a discussion with the agent, it was determined that the card was sent out by a lead generation service in the hopes that recipients would reply with personal information, which could then be sold to agents to do with what they wish.

Potential Responses:

- Lead Generators – Cease and Desist
- Administrative Action
- Attorney General Referrals
 - Consumer Protection Unit



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Misleading Wording

NEW 2022 BENEFIT INFORMATION

2022

Dear [REDACTED]

If you are between the ages of 50 and 85, the federal government provides funeral expense benefits that many Seniors living today are not aware that they qualify for. However, these benefits are thousands of dollars below the expense of today's funerals, estimated by the National Funeral Director's Association to be between \$7,000 and \$10,000.

******YOUR FAMILY IS RESPONSIBLE FOR THE UNPAID BALANCE******

Thousands of Seniors nationwide are applying for the **"New State-Regulated Life Insurance Program"** which will pay up to \$35,000 for these expenses. It is important for you to register for the benefits available to you. To receive information on the plan designed for today's Seniors, return this card in the provided postage paid envelope within 5 days.

Anastasia Beaverhausen
1526 K St. Apt. 200
Lincoln, NE 68508

NAME: Anastasia Beaverhausen	AGE: 72
SPOUSE'S NAME: deceased	AGE:
STREET ADDRESS: 1526 K St. Apt. 200	
Lincoln, NE 68508	
PHONE (402) 304-1035	
<small>Not affiliated or endorsed by any government agency.</small>	

FOR OFFICE USE ONLY NE31055307R Douglas

BUSINESS REPLY MAIL

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

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*Not Real Information, Secret Shopper

Lead Generators

 **Individual Health Quotes** ⋮
Sponsored • 

We've already helped millions of Americans find more affordable health insurance.

- ✓ Low premiums and deductibles
- ✓ Guaranteed coverage
- ✓ 13,000+ plan options from 180+ carriers



INDIVIDUALHEALTHQUOTES.COM
Explore Nebraska Health Plans
Starting at \$99/Month

[SHOP NOW](#)

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Lead Generators

Individual Health Quotes  [CALL NOW](#)

68502

START NOW

- ✓ Lowest prices available
- ✓ Guaranteed coverage

13,000+ Plans from **180+** Carriers

Individual Health Quotes  [CALL NOW](#)

(402) 471-4049

By clicking the button you consent to be contacted via automatic telephone dialing system, by artificial voice and/or pre-recorded message, or by text message at the telephone number you provided above and receive email at the email address you provided above from or on behalf of [GoHealth, HealthMarkets, insurance carriers or their agents, and partner companies](#). Receiving quotes through our website is always free and you are under no obligation to purchase any goods or services as a result of this request. You understand that consent is not a condition of purchase and you may also receive a quote by contacting us via phone.

GoHealth does not charge you for sending or receiving text messages. Your carrier's message and data rates may apply. By using this form you agree to the terms of our [Privacy Policy](#).

View Quotes!
I consent to the terms of this form

Lead Generators

We frequently see many contact attempts that originate from lead generators that are worded in misleading ways. **They can attempt to contact a person on a variety of different medias, including mail, email, social media, or pre-recorded phone messages.** We frequently find that these types of ads use logos and branding of large insurance companies to appear more legitimate and give the communications more traction.

When confronted about their use of misleading language or other deceptive tactics, these companies try to slightly adjust their wording or images to prolong the life of the ad and generate them more income.

It is important to take action against not only the lead generator, but also those who rely on the leads to generate business.

Lead Generators

It is important to note that a large percentage of **Lead Generators do not hold an insurance license**, which can lead to certain options being unavailable to respond to the problem.

Potential Responses:

- Cease and Desist Letters to the Lead Generators
- Communication with Companies Whose Logos Were Used
- Administrative Action against agents or companies who use the leads
- Attorney General Referral

Note: These ads usually hide disclaimers attempting to “rectify” the misleading statements

Collection of Information

A frequent practice we have seen from Lead Generators is the mass collection of policyholder information using legitimate programs as a point of contact to obtain that information. For example, Medicare occasionally requires policyholders to get new cards, and we have seen these cards being collected from policyholders under the guise of “assisting with the process” when, in reality, their information was being harvested and sold.

MEDICARE  **HEALTH INSURANCE**

1-800-MEDICARE (1-800-633-4227)

NAME OF BENEFICIARY
JANE DOE

MEDICARE CLAIM NUMBER **000-00-0000-A** SEX **FEMALE**

IS ENTITLED TO **HOSPITAL (PART A)** EFFECTIVE DATE **07-01-1986**
MEDICAL (PART B) **07-01-1986**

SIGN HERE → *Jane Doe*

Use of Public Figures

 **Self-Employed Health Insurance**
Sponsored • Paid for by GROW with MKG LLC

FINALLY APPROVED!!

Governor Ricketts has recently approved NEW self-employed health insurance programs, designed specifically for Nebraska business owners.

Click HERE to see if you qualify



 3 ads use this creative and text

||| ○ <

Use of Public Figures

A picture of Governor Ricketts was used to drive business to an agency, which was promoting this ad on Facebook. Potential policyholders have tended to treat ads that utilize the likeness of authority figures as being honest, when the opposite was true in this case. There were no new plans approved in this way. The agent in this case did not respond to requests about what plans he was advertised, at least in the conventional way.

Potential Responses:

- Administrative Action
- Cease & Desist
- Attorney General Referral

Misleading Company Names

4 Steps to Medicare Basics

Step 1: Do I need part A and B?

Apply for part A?

- Yes - if you enroll in part B.
- Yes - if you do not enroll in part B, and you continue coverage through your or your spouse's employer.
- No - if you have an HSA account you actively contribute to, and you maintain employer coverage.

Apply for part B?

- Yes - if you do not get coverage through your or your spouse's employer.
- Yes - if you get coverage through an employer, but can save money or get better benefits with Medicare.
- No - if you get coverage through an employer, but cannot save money or get better benefits with Medicare.

Step 2: How do I pay my portion of my bills?

Choose one or the other

Original Medicare with a Supplement	Medicare Advantage (Part C)
<ul style="list-style-type: none"> + Pays all Medicare-approved bills that Medicare doesn't pay for + See any doctor that accepts Medicare + Coverage guaranteed for life + Stable, predictable coverage with a smooth billing process + International travel Coverage - Must pay a monthly premium for a supplement - Must add part D prescription drug coverage 	<ul style="list-style-type: none"> + Typically offers \$0 monthly premiums + Restricted to in-network doctors and hospitals + Pay a small fee to see your doctor, and for each procedure you have done + May include limited benefits for dental, vision, and hearing - Restricted to in-network doctors and hospitals - Coverage levels can change each year, or get cancelled - May not be eligible to upgrade to a supplement in the future

Step 3: How do I apply?

Parts A and B

- Call or visit your local Social Security office
- or sign up online at ssa.gov/benefits/medicare
- or call us.

Medicare Supplement, Part C/ MA, and part D

- Call us to learn what companies offer these products in your area

Please Note:
Special programs exist to provide extra benefits to protected individuals. If you have a low income, receive Medicaid benefits or are a military veteran contact us to see if you qualify.

Step 4: When do I apply?

4 months before your birthday month	2 months before your birthday month	4 months before your birthday month	3 months before your birthday month	2 months before your birthday month	1 month before your birthday month	Your Birthday month (The "birthday rule")	3 months after your birthday month	6 months after your birthday month
Best time to sign up for a supplement	Best time to sign up for parts A and B. Best time to sign up for Medicare Advantage. Best time to sign up for part D prescription drugs					Eligibility begins on the 1st of the year.	Last chance for part A MA, Medicare Adv.	Last chance for a Medicare Supplement

Medicare Confidence Group

Appointment Reminder

Time: 8:30 (am) / pm

Date: 10/2

M T W T F S

Where: [Redacted]

Misleading Company Names

Agents also can create confusion with their agency name itself, in this case the word Medicare was used on the face of business cards and informational documents. This resulted in confusion as to the existence of an affiliation between the agent and Medicare, when no such affiliation existed. This was found to be expressly disallowed by not only state law, but also in the Social Security Act.

Potential Responses:

- Cease and Desist Letters
- Attorney General Referral
- Unfair Trade Practices Act
- Recommend that the agent use a DBA



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IMPROPER MARKETING ACTIVITIES

Improper Marketing Activities

- There is continued concern on how consumers are being marketed away from ACA compliant plans to short-term limited duration health plans and other packaged products intended to look like ACA health plans. The concern is not that all short-term limited duration (STLD) plans are inappropriate, there is indeed a need for these plans to exist for consumers and when used appropriately, they can meet the short-term need for temporary coverage.

Improper Marketing Activities

- The real concern is when these plans are marketed and misrepresented as ACA or ACA look-a-like products. In many cases, the STLD plans are sold as a stand-alone product, but often, they are coupled with other products such as discount health cards (vision/dental/prescription drugs), telehealth services and even hospital coverage and/or discounts for being a member of a group. These products often have many exclusions, specifically for pre-existing conditions, and offer very limited benefits and therefore often leave consumers with massive bills for services that are not covered.



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FTC Consumer Advice

- Signs of a Health Insurance Scam
 - Scammers say they're from the government and need money or your personal information.
 - Scammers say you need to pay a fee for a new Medicare card or you'll lose your Medicare coverage.
 - Scammers try to sell you a fake medical discount plan.
 - Scammers want your sensitive personal information in exchange for a price quote.
 - Scammers want you to pay for help with the Health Insurance Marketplace.

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Imitation Websites

BIDEN
CARE

GET QUOTES FROM TOP PROVIDERS IN MINUTES

SELECT A PLAN

Browse insurance plans and save.
We work with America's top insurance carriers who can help you compare coverage rates and provide you with information about their policies.

- ★ Receive Free Quotes
- ★ Compare Top Companies
- ★ Save Time & Money

FIND YOUR PLAN

See site for details and disclosures. Quotes provided by licensed agents.
To unsubscribe, [click here](#) or write to: HealthExchangeUSA 378 Diederich Blvd # 153 Ashland, KY 41101



Martin,

View updated Health Insurance plans available in NE.

Compare Trumpcare plans from the top insurance companies. Huge savings on healthcare costs may be available.

[View Plans →](#)

Prefer to discuss plans by phone? Call (877) 513-0997

*This is an advertisement. We are not an insurance carrier, agent, or broker and are not affiliated with any plan or endorsed by any government entity or agency. We connect consumers with insurance carriers and their policies.

531 Main Street Suite 902, El Segundo, CA 90245

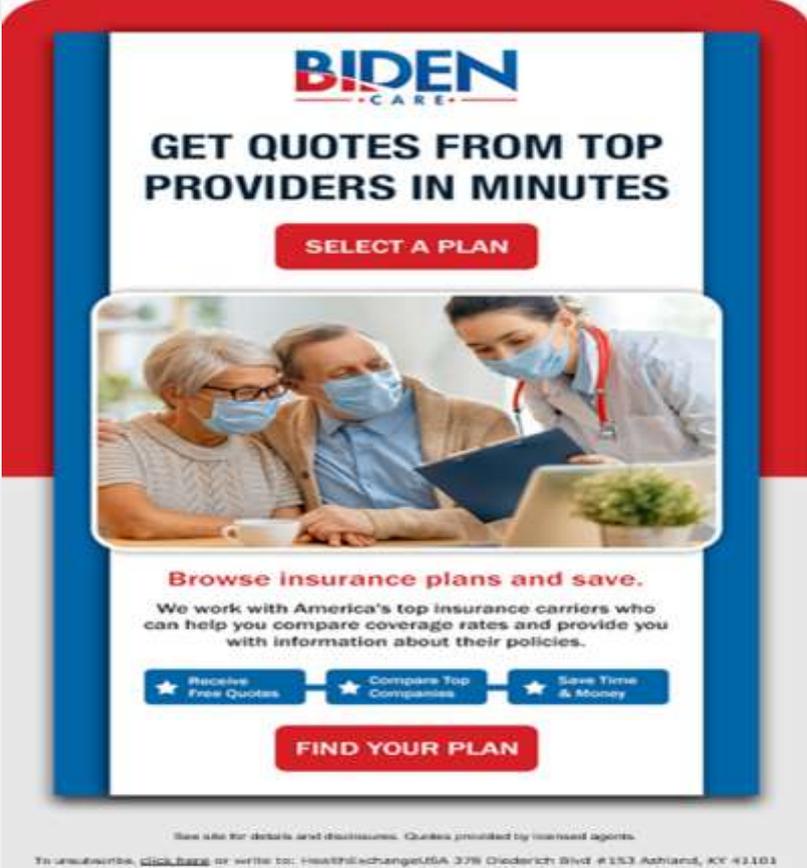
© Health Plans America 2020

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Improper Marketing Activities

- The marketing of these products often involves the consumer going to a legitimate website to obtain information about healthcare coverage, only to be lured by a pop-up to an incorrect site or having their initial inquiry turned into a request for a quote without consent. Alternatively, consumers could be on a legitimate website that allows request for quotes to be turned into a lead which is then sold to third parties. These third-party lead generators sell the consumers contact information to companies, agents, or in some case, they may use the information for themselves.



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CARE

GET QUOTES FROM TOP PROVIDERS IN MINUTES

SELECT A PLAN

Browse insurance plans and save.
We work with America's top insurance carriers who can help you compare coverage rates and provide you with information about their policies.

★ Receive Free Quotes — ★ Compare Top Companies — ★ Save Time & Money

FIND YOUR PLAN

See site for details and disclosures. Quotes provided by licensed agents.
To unsubscribe, [click here](#) or write to: HealthExchangeUSA, 378 Diederich Blvd #153 Ashland, KY 41101

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Imitation Websites

Imitation websites are routinely being used to lure potential policyholders away from legitimate websites in the hopes of selling them alternative products that will not meet their needs. These operations make frequent use of call centers to field requests and provide frequently misleading information about products and plans.

Potential Responses:

- Cease and Desist Letters
- Attorney General Referral
- Secret Shopper Programs



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Improper Marketing Activities

These lead-generating and marketing companies can be very intrusive with disruptive rapid fire robocalls. For consumers that are on a limited data plan for their phones for calls or texting, these can also be expensive. Most importantly, many of the leads can result in consumers being lured away from comprehensive ACA health plans to less expensive and restrictive alternatives. Even with recent state and federal actions, more and more cases of abuse have been occurring, especially with the recent expansion to open enrollment for ACA plans.

Improper Marketing Activities

There have been some recent cases from the Federal Trade Commissioner (FTC) and the Federal Communications Commission (FCC) reported on these lead generating companies, as well as other recent actions:

Most recently, on March 18, 2021, the FCC imposed fines to a Texas-based telemarketer (companies of the Rising Eagle Capital Group LLC and affiliates) for \$225 Million for illegally transmitting approximately 1 billion robocalls, many of them illegally spoofed, to sell short-term, limited-duration health insurance plans.

Improper Marketing Activities

On October 6, 2020, there was a public notice from the FCC, CG Docket No. 02-2782 released about a telemarketing firm Healthcare Inc. that lures consumers into submitting personal information on their website Healthcare.com, not to be confused with the federal website Healthcare.gov. The information submitted by a consumer is not a formal request for a quote, yet consumers then start to receive frequent calls from telemarketers and text messages for which they may end up paying fees. There is a list of 1,892 Healthcare Inc. Partners on the entity's website.

Phone Scripts

On February 24, 2022, the Department of Justice issued an indictment against Simple Health, charging them with using misleading scripts when selling limited indemnity plans. These plans have a relatively low cap on the amount of medical expenses they will cover, and once this cap is met, the policyholders would be responsible for paying 100% of their medical expenses out of pocket. The sales script for this product made the following declarations:

“The whole idea of this plan is to make your out of pocket expenses as low as possible...” and “When all is said and done, you end up with pennies on the dollar!”

These plans were marketed across the country and sold to thousands of people.

Advice to Carriers/Policyholders/Public

- Keep a sharp lookout on anything forward facing towards potential policyholders that could cause confusion, such as:
 - Misleading or vague wording in advertisements
 - Misleading company names
 - Use of authority figures
 - Use of major company logos
 - Conflict with written and spoken communications
 - Spoofing (Incorrect Phone Numbers on Caller ID)
 - Unsolicited Contact (i.e. Social Media)
 - Attempts to obtain personal information

Advice

If it looks too good to be true, it probably is.

If you come across anything that you are unsure about, you can always refer it to the Department of Insurance to verify the authenticity of the product or advertisement.

CONSUMER AFFAIRS HOTLINE: 877-564-7323

<https://doi.nebraska.gov/consumer/consumer-help>

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NAIC Response to Improper Marketing

- The National Association of Insurance Commissioners (NAIC) recognized the problem of Improper Marketing
 - The NAIC formed a committee called the Improper Marketing of Health Plans Working Group
 - The Group has three main goals
 - Education
 - Exchange of Information Between States and the Federal Government
 - Creation or Modification of existing model laws and regulations

NAIC Response to Improper Marketing Education

- The NAIC and Individual Departments of Insurance are utilizing this group, along with other committees at the NAIC, to get the word out about this issue and to educate consumers about what to do if they receive these type of solicitations
- The NAIC and the respective Insurance Departments encourage consumers to contact the Department and file complaints in order to initiate investigations
- The NAIC also works with insurers so they can work with us and take steps to mitigate these marketing issues.

NAIC Response to Improper Marketing Exchange of Information

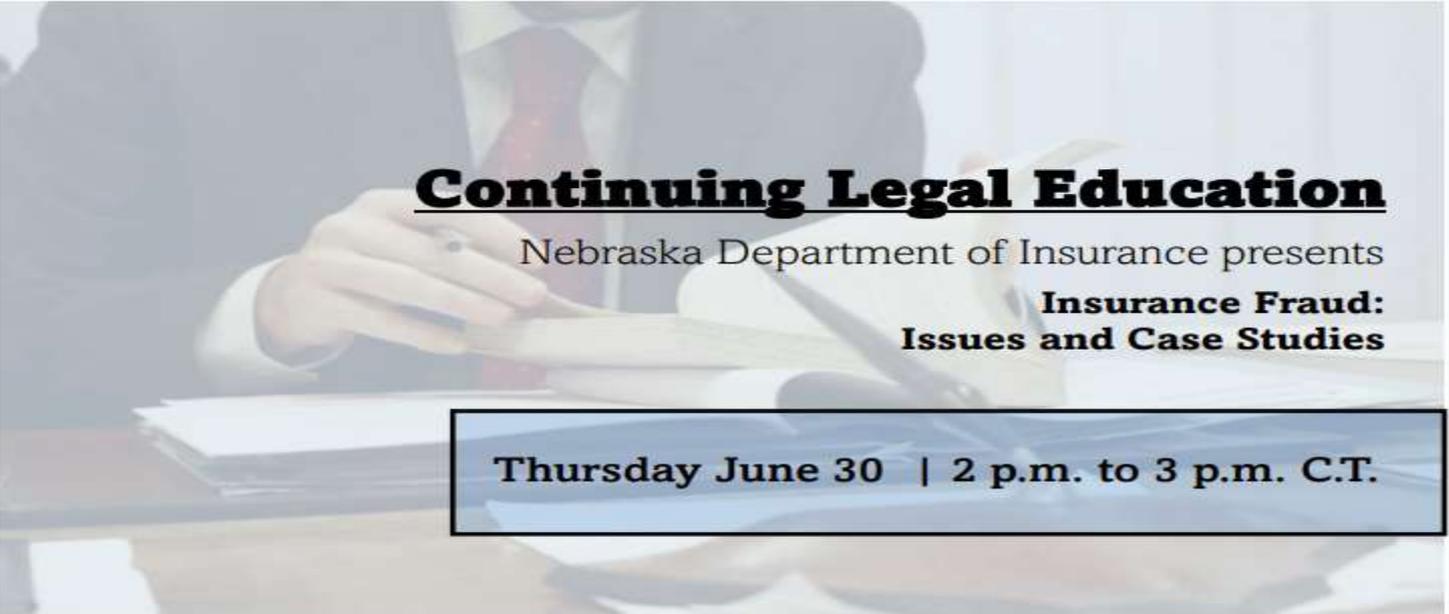
- Regulators of Insurance, federal agencies and representatives from various attorney general's offices participate in regulator to regulator only calls
 - The calls are designed to encourage the exchange of case information and investigations on entities who are improperly marketing plans
 - The discussion also facilitates litigation, both administrative, civil and criminal cases against bad actors
 - The federal government has been instrumental since these entities cross state lines and the internet does not care about borders

NAIC Response to Improper Marketing Model Law and Regulation Creation

- Some states believed that they could not reach the lead generators under their insurance codes. Those states instead utilized their Attorney General's offices at times for enforcement purposes.
- This group was formed to amend or create a model law and regulation to assure that insurance codes could regulate in this field.
- As way of background, the NAIC models are discussed and debated in open sessions between consumer groups, industry and regulators.
 - This particular issue has not been as controversial as others because no one is in favor of fraud.
- The model is then proposed as legislation in the respective legislatures.

Housekeeping

- Certificates of completion will be emailed to participants
- Please stick around after the Q&A for a brief satisfaction survey



Continuing Legal Education

Nebraska Department of Insurance presents

**Insurance Fraud:
Issues and Case Studies**

Thursday June 30 | 2 p.m. to 3 p.m. C.T.

With a growing insurance industry across the United States, the opportunity to commit insurance fraud is growing. For those wanting to learn more about how to recognize and prevent insurance fraud, please join the Nebraska Department of Insurance for a presentation filled with case studies and learn about the tools the Department utilizes to fight insurance fraud.

Speakers include Seth Felton, legal counsel for NDOI, and Kim Church, head of NDOI's Fraud Division.

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Questions?

Contact:

Michael Anderson

michael.w.anderson@nebraska.gov

402-471-4649

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Satisfaction Survey

If you have a topic you would like us to discuss in future presentations, please email us at aj.raaska@nebraska.gov