Misleading Marketing and Advertising

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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

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.
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.
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
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
Misleading Wording

*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

BRASKA
Lead Generators

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.
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.
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 BELOW 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?
- Yes - if you work in part B.
- No - if you do not work in part B and you continue coverage through your or your spouse's employer.
- Yes - if you have an HSA account and you actively contribute to it 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 you can save money or get better benefits with Medicare.
- Yes - If you get coverage through an employer, but you can save money or get better benefits with Medicare.

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

<table>
<thead>
<tr>
<th>Medicare Advantage (Part C)</th>
<th>Medicare with a Supplement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typically offers $0 monthly premiums.</td>
<td>Puts all Medicare-approved bills that Medicare doesn’t pay for.</td>
</tr>
<tr>
<td>Restricted to in-network doctors and hospitals</td>
<td>See any doctor that accepts Medicare.</td>
</tr>
<tr>
<td>Pay a small fee to see your doctor, and for each procedure you have done</td>
<td>Coverage guaranteed for life.</td>
</tr>
<tr>
<td>May includes limited benefits for dental, vision, and hearing</td>
<td>Stable, predictable coverage with a smooth billing process.</td>
</tr>
<tr>
<td>Coverage levels can change each year, or get cancelled</td>
<td>International travel Coverage.</td>
</tr>
<tr>
<td>May not be eligible to upgrade to a supplement in the future</td>
<td>Must pay a monthly premium for a supplement.</td>
</tr>
<tr>
<td>Must add part D prescription drug coverage</td>
<td>Must add part D prescription drug coverage.</td>
</tr>
</tbody>
</table>

Step 3: How do I apply?
Parts A and B:
- Call or visit your local Social Security office.
- Or visit the Medicare Advantage plan.
- Or call us.

Medicare Supplement, Part C/M A, and part D:
- Call us to learn what companies offer these products in your area.

Step 4: When do I apply?

- Apply for Medicare at any time during the 3 months before your 65th birthday.
- Apply for Medicare late fees:
  - Some companies may charge a late fee for late enrollment.
  - Some companies may charge a late fee for late enrollment.

Medicare Advantage:
- Apply for Medicare Advantage when you turn 65.
- Apply for Medicare Advantage when you turn 65.
- Apply for Medicare Advantage when you turn 65.

Medicare Supplement:
- Apply for Medicare Supplement when you turn 65.
- Apply for Medicare Supplement when you turn 65.
- Apply for Medicare Supplement when you turn 65.

Notice:
- Medicare Advantage plans may have a network. Medicare Supplement plans do not.
- Medicare Advantage plans may have a network. Medicare Supplement plans do not.
- Medicare Advantage plans may have a network. Medicare Supplement plans do not.

Source:
- Source:
- Source:
- Source:

NEBRASKA
Good Life. Great Opportunity.
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
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.
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.
Imitation Websites

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

NEBRASKA
Good Life. Great Opportunity.
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, and do not endorse any government entity or agency. We connect consumers with insurance carriers and the marketplace.

531 Main Street Suite 902, El Segundo, CA 90245

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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.
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
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
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
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.
Questions?

Contact:
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402-471-4649
Satisfaction Survey

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