

MAINE STATE LEGISLATURE

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Date 5-26-23

(Filing No S-139)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to S P 508, L D 1271, "An Act to Require a Disclaimer on Promotional Materials for Medicare, Medicaid and MaineCare Products by Private Entities"

Amend the bill by striking out everything after the enacting clause and inserting the following

'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

COMMITTEE AMENDMENT

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

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

7 **3. Rules.** The Attorney General may adopt rules to implement this chapter. Rules
8 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
9 375, subchapter 2-A.

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

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

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

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

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

23 C Solicit the sale of Medicare products door-to-door prior to receiving an invitation
24 from a consumer, and

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

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

29 **§2152-C. Disclosures in printed marketing materials of Medicare products**

30 **1 Disclosures.** Except as provided in subsections 2 and 3, a person may not use printed
31 materials marketing Medicare products unless the material

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

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

38 C Contains in a type size no smaller than the 2nd largest type size on the material any
39 other disclaimer on the material, and

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

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

5 A Informational brochures or other material developed or distributed by a state or
6 federal regulatory agency or a nonprofit organization, or

7 B Information related to an existing policy, from a policyholder's insurer, licensed
8 agent or agency of record, including, but not limited to, information for the purpose of
9 assisting, educating or communicating the status of plan benefits, claims, appeals,
10 grievances or notice of termination

11 **3 Application.** This subsection does not apply to any marketing material that has been
12 filed with and approved by the superintendent, or filed with and approved by the federal
13 Department of Health and Human Services, Centers for Medicare and Medicaid Services
14 or filed with the Centers for Medicare and Medicaid Services under that agency's policies
15 allowing for the filing and use of certain marketing materials Evidence of that approval
16 or filing with the Centers for Medicare and Medicaid Services must be produced upon
17 request of the superintendent

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

21 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
22 number to read consecutively

23 **SUMMARY**

24 This amendment replaces the bill The amendment establishes that the use of
25 promotional materials for Medicare, Medicaid and MaineCare products without the
26 disclaimer required in the bill is an unfair trade practice under the Maine Insurance Code
27 The amendment also provides that the provisions relating to the required disclaimers on
28 promotional materials apply to any person engaging in promoting these products and adds
29 a provision making a violation an unfair trade practice subject to enforcement by the
30 Attorney General

31 **FISCAL NOTE REQUIRED**

32 (See attached)



131st MAINE LEGISLATURE

LD 1271

LR 1844(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A" (5-139)

Committee: Health Coverage, Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Office of the Attorney General and to the Bureau of Insurance within the Department Professional and Financial Regulation related to requiring disclaimers on promotional materials for Medicare, Medicaid and MaineCare products are expected to be minor and can be absorbed within existing budgeted resources