

## **4123-6-05.1 Employer access to the HPP - MCO advertising and solicitation.**

- (A) No MCO, or individual or entity affiliated with the MCO or acting on behalf of the MCO, shall directly solicit an employer outside of an open enrollment period as provided in rule 4123-6-05.2 of the Administrative Code.
- (B) No MCO, or individual or entity affiliated with the MCO or acting on behalf of the MCO, shall engage in any advertising or solicitation directed to employers which is false, fraudulent, deceptive, or misleading.
- (C) No MCO, or individual or entity affiliated with the MCO or acting on behalf of the MCO, shall engage in any advertising or solicitation in violation of the MCO "firewall" rule, rule 4123-6-03.9 of the Administrative Code.
- (D) No MCO, or individual or entity affiliated with the MCO or acting on behalf of the MCO, shall engage in any advertising or solicitation in violation of the MCO "anti-kickback" rule, rule 4123-6-05.3 of the Administrative Code.
- (E) For purposes of this rule, an individual or entity is "affiliated with an MCO" when it:
  - (1) Owns, is owned by, or is under common ownership with an MCO, directly or indirectly through one or more intermediaries;
  - (2) Controls, is controlled by, or is under common control with an MCO, directly or indirectly through one or more intermediaries;
  - (3) Has a contractual or other business arrangement with an MCO;
  - (4) Has one or more owners, shareholders, partners, members, officers, directors or other persons who exercise operational or managerial control in common with the MCO.
- (F) For purposes of this rule, "directly solicit" or "direct solicitation" means phone calls, on-site visits or any media materials (print, radio, website, television, etc.) distributed to an employer that encourage the employer to select a new MCO, or that contain comparisons of any MCO to another MCO or that indicate the MCO is "best," "number one," etc.

"Directly solicit" or "direct solicitation" does not include phone calls, on-site visits or any media materials (print, radio, website, television, etc.) distributed to an employer that encourage the employer to select a new MCO, or that contain comparisons of any MCO to another MCO or that indicate the MCO is "best," "number one," etc. generated in response to a request by the employer.

Direct solicitation materials that contain comparisons of any MCO to another MCO or that indicate the MCO is best, number one, etc. must include a legible, audible, or viewable footnote that identifies all of the information used as the basis for the comparison including the source of the data, the timeframe or measurement period covered, and a reasonable description or definition of the terms used.

- (G) Notwithstanding any other provision of this rule, solicitation of an employer on behalf of an MCO by a third party administrator, whether affiliated with the MCO or not, is limited to the third party administrator's educating, recommending, and advising its existing client employers regarding MCO selection, and only during an open enrollment period as provided in rule 4123-6-05.2 of the Administrative Code, unless requested by the employer. A third party administrator shall not engage in any of the above educational or advisory activities directed to employers which are false, fraudulent, deceptive, or misleading, and shall not receive any form of remuneration or "kickback" from the MCO.
- (H) An MCO that violates this rule, or on whose behalf any third party administrator or individual or entity affiliated with the MCO has violated this rule, shall be subject to one or more of the following penalties, in the bureau's discretion:
  - (1) The MCO may be placed at capacity;
  - (2) The MCO may be required to issue a retraction;
  - (3) Any employer selection(s) resulting from the violation may be removed from the MCO;
  - (4) The MCO may be subject to any penalties specified in the MCO contract, and/or;
  - (5) The MCO may be subject to decertification and/or termination of its contract pursuant to the rules of this chapter of the Administrative Code.

Effective: 2/1/10

Prior Effective Dates: 1/1/01