

4123-6-05.3 Employer access to the HPP; certain solicitation practices by MCOs prohibited.

- (A) In soliciting employers as provided under rule 4123-6-05.1 of the Administrative Code, an MCO, or any individual or entity affiliated with the MCO as defined in rule 4123-6-05.1 of the Administrative Code, or any other individual or entity acting on behalf of an MCO or for the benefit of an MCO, shall not:
- (1) Pay, allow, or give, or offer to pay, allow, or give, to any prospective employer or to any other person, firm, or corporation not an employee or agent of the MCO, either directly or indirectly, as an inducement to or in return for an employer's selection of the MCO, any rebate, premium, or kickback, or any special favor or advantage, or any other valuable consideration or inducement not provided for under Chapter 4123-6 of the Administrative Code.
 - (2) Pay, allow, or give, or offer to pay, allow, or give any commission, consideration, money, or other thing of value to any person, firm, or corporation not an employee or agent of the MCO for soliciting, negotiating, procuring, placing, writing, renewing, forwarding, or transmitting to the bureau an employer's selection of the MCO.
 - (3) Pay, allow, or give, or offer to pay, allow, or give a lead fee to any person, firm, or corporation other than an employee or agent of the MCO. For purposes of this rule, "lead fee" is defined as payments by an MCO to any person, firm, or corporation other than an employee or agent of the MCO for referrals of prospective employers where such payments are:
 - (a) Conditioned on the prospective employer selecting the MCO; and/or
 - (b) Not reasonably related to actual expense reimbursement by the MCO to the person, firm or corporation referring the prospective employer.
- (B) Notwithstanding paragraph (A) of this rule, the MCO may reimburse to a trade or business association certain expenses in accordance with the following requirements:
- (1) The trade or business association shall meet the requirements for being a sponsoring organization for group rating under section 4123.29 of the Revised Code and rules 4123-17-61 to 4123-17-68 of the Administrative Code.
 - (2) The MCO may reimburse to the trade or business association only its actual and reasonable expenses incurred in educating its member employers on bureau and MCO medical management and cost containment services and related rules, policies, and processes.

- (3) The MCO may reimburse to the trade or business association only its actual and reasonable expenses incurred in marketing the MCO to its member employers, subject to the limits set forth in paragraph (B)(4) of this rule, so long as such marketing is in compliance with rule 4123-6-05.1 of the Administrative Code.
 - (4) The reimbursement of a trade or business association's actual and reasonable expenses incurred in marketing the MCO to its member employers during a calendar year shall not exceed sixteen one-hundredths of one per cent of the premium of those employers that are members of the trade or business association and that have selected the MCO. The premium used in calculating allowable reimbursement under this rule shall be the premium used by the bureau to calculate payments to the MCO under the payment provisions of the MCO contract.
 - (5) The MCO and the trade or business association shall keep accurate records of all marketing and education services provided to its member employers for a period of four years from the date of performance of any such service. The MCO and the trade or business association shall provide the bureau with access to such records within a reasonable time after a request for audit of such records by the bureau.
- (C) Except as provided in paragraph (B) of this rule, no person, firm, or corporation not an employee or agent of the MCO shall knowingly receive any payment, commission, lead fee, rebate, premium or kickback, or any other valuable consideration or thing of value prohibited under paragraph (A) of this rule.
- (D) For purposes of this rule, "affiliated with an MCO" shall have the same meaning as in paragraph (E) of rule 4123-6-05.1 of the Administrative Code.
- (E) For purposes of this rule, "agent" of the MCO means:
- (1) An insurance agent or broker contracted by the MCO and licensed by the Ohio department of insurance pursuant to Title XXXIX of the Revised Code;
 - (2) An entity contracted by the MCO to conduct non-telephonic marketing that has not had and does not contemplate having activities of any nature with the Ohio workers' compensation system so as to create a conflict of interest or the appearance of a conflict of interest under rule 4123-6-03.9 of the Administrative Code;
 - (3) A telemarketer or telemarketing firm contracted by the MCO who has obtained a certificate of registration from the Ohio attorney general in accordance with Chapter 4719. of the Revised Code.

"Agent" of the MCO does not include the following: a third party administrator, group rating sponsor, business or trade association, or an individual or entity

affiliated with the MCO that has had or contemplates having activities with the Ohio workers' compensation system so as to create a conflict of interest or the appearance of a conflict of interest under rule 4123-6-03.9 of the Administrative Code.

(F) An MCO that violates this rule shall be subject to the penalties specified in paragraph (H) of the rule 4123-6-05.1 of the Administrative Code.

Effective: 2/1/10

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