CHAPTER 2: Marketing and Solicitation of Beneficiaries

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Overview

Some types of suspected health care fraud, errors, and abuse complaints arise before a health care service has even been provided. They result from the marketing and sales of health insurance or health services – including purported insurance or services – to Medicare beneficiaries. There are three main categories of such solicitation considered to be SMP complex issues that should be referred to investigative entities:

1) Medicare Advantage (Part C) and Medicare Prescription Drug Coverage (Part D) marketing violations

2) Durable Medical Equipment, Prosthetics, and Supplies (DMEPOS) marketing violations

3) Attempted theft of Medicare numbers through solicitation

Understanding Part C and Part D Marketing Guidelines

Unlike Original Medicare, Medicare Part C and Part D are administered, marketed, and sold by private insurance companies. The Centers for Medicare & Medicaid Services (CMS) has developed guidelines for marketing Part C and Part D insurance that protect Medicare beneficiaries from manipulative and deceptive sales and enrollment tactics. Marketing products and services is a natural and expected activity in the private sector. Because Medicare Part C and Part D are funded by the government, Medicare Part C and Part D marketing behavior is governed by federal rules (regulation or statute).

Know the Difference between Marketing and Education

Plan sponsors and their representatives, including agents and brokers, must follow strict guidelines when they wish to market to beneficiaries. Marketing is equivalent to “steering” beneficiaries toward their plan. A fundamental principle is that marketing cannot be conducted under the guise of education. Providing neutral information can be considered education. Selling a product can be considered marketing. In practice, however, it’s not that simple, considering CMS publishes more than 100 pages of guidance on the subject.

CMS Definitions:

- **Education** is informing a beneficiary in an unbiased way about Original Medicare, Medicare Advantage Plans, Part D plans, and Medicare Advantage Plan products.

- **Marketing** is steering, or attempting to steer, a potential enrollee toward a plan or limited number of plans, or promoting a plan or a number of plans.
The way an event is conducted and advertised is crucial to determining whether or not a violation of the CMS marketing rules has occurred. Many activities allowed at marketing events are prohibited at education events. For example, though both types of events involve the provision of information in group settings, educational events must only be held in a public venue, whereas marketing events can also be held at an in-home or one-on-one setting.

Here are some overarching guidelines:

- **Education events** are clearly advertised to beneficiaries as such. Education events may be hosted either by the plan sponsor or by an outside entity and are held in a public venue. Education events may not include any sales activities such as the distribution of marketing materials or the distribution or collection of plan applications.

- **Marketing/sales events** are clearly advertised to beneficiaries as such. Plan sponsors may promote specific benefits, premiums, or services offered by the plan. Plan sponsors may conduct a formal event where a presentation is provided to Medicare beneficiaries or an informal event where plan sponsors are only distributing health plan brochures and pre-enrollment materials. Events may be conducted in one-on-one settings. Plan sponsors may also accept enrollment forms and perform enrollment at marketing/sales events.

**Key Concept**

Plans may provide education at a marketing event, but they may not market or sell at an education event.

**Okay or Not Okay?**

To help you understand specific marketing and education behaviors and to determine what is or is not okay, see Appendix C of this manual and Chapter 4 of the *SMP Foundations Training Manual*. Both outline some of the common acceptable and unacceptable practices that may be seen by beneficiaries.

To review the most current CMS Marketing Guidelines (100+ pages), visit [http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html](http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html).
Referring Suspected Part C and Part D Marketing Violations

Because Medicare Part C and Part D are private insurance plans, they come under the jurisdiction of both CMS and the state departments of insurance. Complaints may or may not be referred to both types of agencies, depending upon the nature of the issue.

Complaints Referred to CMS RO DOI Liaisons

CMS Regional Offices (RO) have staff dedicated to working with each state’s Department of Insurance (DOI). These staff members are known as the CMS RO DOI liaisons. They handle complaints of suspected plan compliance and enforcement violations, including but not limited to Part C and Part D marketing violations. Such as:

- Part C and Part D marketing violations by agents, brokers, or plans
- Agents, brokers, or plans conducting business after they have been asked to cease and desist
- Misleading advertising. For example:
  - Materials that look like they are being sent from an official government source
  - Materials that imply private fee-for-service plans function as Medicare supplement plans
- Offering inducements to enroll
- Enrollment complaints
  - Enrollment of beneficiaries in a plan without beneficiary consent
  - Disenrolling (removing) a beneficiary from Original Medicare without their knowledge
  - Falsely telling a beneficiary that their physician or hospital accepts the plan

Key Concept

Appendix A shows a flow chart summarizing all types of referrals, including referrals of Part C and Part D marketing violations and egregious agent/broker behavior.
• Phishing Scams
  o Unsolicited emails purporting to be a valid Part C or Part D plan or service.
  o These emails often entice an individual to visit a fraudulent website and provide sensitive personal information.

• Marketing insurance products that do not exist

Complaints Referred to the State Department of Insurance

Though CMS RO DOI Liaisons will also alert the state’s department of insurance to the issues brought to their attention by the SMP, SMPs should refer complaints of egregious agent/broker behavior to their state department of insurance concurrently with the referral to CMS. This will ensure that both entities will know and be able to respond to your referral as quickly as possible.

To find your state department of insurance, you can use the interactive map on the National Association of Insurance Commissioner’s website: www.naic.org.

Medigap Sales

Though “Medigap” (Medicare Supplement) policies are sold by private companies, they are not a Part C or Part D product and are not handled under the SMP unique referral relationship with CMS RO DOI Liaisons. The sale of Medigap policies is governed by state department of insurance restrictions, which may or may not be as strict as the federal regulations governing the sale of Part C or Part D plans. Below are two frequently asked questions about the sale of Medigap policies:

1. Can policies be sold door to door?
   - Not Okay. Some states prohibit door to door sales of Medigap policies.
   - Okay. In Texas, for example, agents can sell Medigap policies door-to-door.

     o To determine whether or not a sales practice for a Medigap policy is allowable in your state, contact your state’s department of insurance. As a reminder, to find your state department of insurance, use the interactive map on the National Association of Insurance Commissioners website: www.naic.org.
2. Is it okay to try to sell Medigap policies to beneficiaries with Medicare Advantage Plans?

✔ Not Okay. If a beneficiary joins a Medicare Advantage Plan, it is illegal for anyone to attempt to sell that beneficiary a Medigap policy, with the exception below.

✔ Okay. If a beneficiary is switching back to Original Medicare, he or she can be sold a Medigap policy.

Lead Generators (such as postcard solicitation)

It is not unusual for SMPs to receive complaints from beneficiaries about suspicious mailings, often postcards, that turn out to be what are called “Lead Generators.” Lead generators are ways of developing contact lists for insurance solicitation and are commonly seen in connection with the sales of Medigap plans.

Unless a Part C or Part D product is involved, CMS does not have any regulatory oversight of such materials. Some states do regulate lead generators, however. Check with your state department of insurance to determine whether or not a particular postcard or other lead-generating solicitation is illegal and should be referred to them.

Government Look-Alike Mail

Mailings should make it clear that they come from a private organization, not a government entity. If the lead generating mail is designed to appear to have come from the government, refer it to the U.S. Postal Service.

• Call your local post office for guidance, or

• Submit a complaint online: https://postalinspectors.uspis.gov/forms/MailFraudComplaint.aspx

Keep the mailing. You may be asked to send the suspicious mailing to the postal inspector, care of your local postmaster.
Equipment and Supplies Marketing Guidelines

As explained in Chapter 4 of the *SMP Foundations Training Manual*, there are legal guidelines that limit the ability of providers and suppliers to market directly to beneficiaries. As a reminder, marketing of Medicare-covered items can only take place under one or more of the following three circumstances:

- The beneficiary has given written permission to be contacted.
- The supplier is contacting the beneficiary about an item already provided.
- The supplier has furnished one Medicare-covered item within the previous 15 months.

It is unfortunately common for these guidelines to be violated, which is fraudulent, and violations should be referred to the Office of Inspector General (OIG) Hotline via ACL (as indicated in Appendix A: SMP Complex Issues and Referrals Flow Chart). Common examples include soliciting beneficiaries for their Medicare numbers or physician’s names or trying to market diabetes supplies and back braces. Not only can these calls result in the theft of Medicare numbers, they can result in faxes being sent to physicians asking them to sign off on orders for equipment or supplies the beneficiary may not need or want. In its fraud alert on the subject, the OIG also emphasized that the guidelines apply to independent marketing firms. Providers and suppliers cannot do indirectly what they are prohibited from doing directly.

When Solicitation Involves Medicare Numbers

Older adults are frequent targets of solicitation through telemarketing, door-to-door sales, and the U.S. Mail. Consumer scams by themselves are not considered SMP complex issues. However, consumer scams that target Medicare beneficiaries or use the Medicare program as a ruse to falsely obtain Medicare numbers ARE consider SMP complex issues.
Compromised Medicare Numbers

Scam artists solicit Medicare numbers because they can be used to submit false claims to Medicare. When Medicare beneficiaries fall prey to consumer scams aimed at obtaining Medicare numbers, their Medicare number is considered to be “compromised.” This type of complaint is an SMP complex issue that should be referred to the OIG Hotline via ACL. The OIG Hotline will alert CMS, who maintains the national list of compromised Medicare numbers.

**NOTE:** When beneficiaries refuse to share their Medicare numbers with callers seeking Medicare numbers, these unsuccessful scam attempts are considered “macro-level” complex issues (see the SMP Macro-Level Complex Issues Frequently Asked Questions in the SMP Resource Library for more information). Though you will not refer unsuccessful consumer scam attempts to the OIG Hotline, enter the scam attempt into the SMP data reporting system. **The data may be used at the national level to respond to requests for information about scams and trends seen by SMPs.**

Local Law Enforcement

Local law enforcement should be alerted about suspicious solicitation through telemarketing, door-to-door sales, and the mail. Preferably, the beneficiary or caregiver should contact law enforcement on their own behalf. If the beneficiary or caregiver is unable to do so, the SMP may need to alert law enforcement.

State Attorneys General

As discussed in Chapter 1, SMPs also serve as public educators. Consumer scams targeting Medicare beneficiaries should also be reported to your state attorney general’s office, which may be interested in issuing a public service announcement. The state attorneys general have law enforcement authority and serve as counsellors to state legislatures and state agencies and also as the "People’s Lawyer" for all citizens. The state attorneys general act as public advocates in the area of consumer protections, handle serious state-wide criminal prosecutions, institute civil suits on behalf of the state, and operate victim compensation programs.

To find the attorney general’s office in your state, visit the National Association of Attorneys General (NAAG) website, [www.naag.org](http://www.naag.org).
Federal Trade Commission

The Federal Trade Commission (FTC) is a national partner with the SMP program. The FTC is the nation’s consumer protection agency, pursuing vigorous law enforcement and sharing its expertise with federal and state legislatures and U.S. and international government agencies.

Filing a complaint helps the FTC detect patterns of wrong-doing, and leads to investigations and prosecutions. The FTC does not, however, manage individual complaints or follow up with complainants. Instead, the FTC enters all complaints it receives into their Consumer Sentinel, a secure online database that is used by thousands of civil and criminal law enforcement authorities worldwide.

Because of the types of questions asked, it is preferable for the beneficiary to file their own complaint with the FTC; however, some SMP clients may not be able to complete this process and may need the SMP to file a complaint on their behalf.

Complaints can be filed with the FTC online or by telephone:

- Online complaint form: [www.ftc.gov](http://www.ftc.gov), then click on “Complaint Assistant.”
- Toll-free helpline: 1-877-FTC-HELP (1-877-382-4357)

National Do Not Call Registry

The FTC manages the National Do Not Call Registry, which is a free service that allows consumers to avoid receiving telemarketing calls. Most telemarketers should not call numbers that have been on the registry for 31 days. If they do, a complaint should be filed with the registry. The registry does not cover calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship. Telephone numbers on the registry will only be removed when they are disconnected and reassigned, or when the consumer chooses to remove a number from the registry.

Beneficiaries can register by phone at 1-888-382-1222 or online at [www.donotcall.gov](http://www.donotcall.gov).
Better Business Bureau

When you have the name of a suspicious company or provider marketing to beneficiaries, you can use The Council of Better Business Bureaus (BBB) national website to either research their business or file a complaint online. Here’s how:

1. Go to www.bbb.org
2. Click on "US and Canada Headquarters" to search the national database
3. Type the name of the company in the space provided
4. Any matches will appear. Follow the links provided to learn more about a specific entity, such as:
   - Whether or not the business is registered with the BBB
   - What rating they have been given by the BBB
   - The number and nature of complaints filed against them, if any
   - Whether or not these complaints were founded
   - Procedures for filing a complaint

Recommended Resources

Publications

- Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (OIG): http://oig.hhs.gov/fraud/docs/alertsandbulletins/fraudalert_telemarketing.pdf
- SMP Foundations Training Manual: Available in print from your SMP program or electronically from the SMP Resource Library www.smpresource.org/resourcelibrary
- SMP data reporting manual: Available in print from your SMP program or electronically from the SMP Resource Library www.smpresource.org/resourcelibrary
- Medicare & You Handbook: http://www.medicare.gov/publications/pubs/pdf/10050.pdf or call 1-800-Medicare to order a new copy each year
Online Resources

• CMS:
  o www.cms.gov
  o www.mymedicare.gov
  o CMS Managed Care Marketing Guidelines: www.cms.gov/ManagedCareMarketing/
  o CMS Marketing Guidelines: www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html

• FTC:
  o www.ftc.gov
  o www.donotcall.gov

• National Association of Attorneys General: www.naag.org

• National Association of Insurance Commissioners: www.naic.org

• OIG: www.oig.hhs.gov

• U.S. Postal Service
  o Online complaint: https://postalinspectors.uspis.gov/forms/MailFraudComplaint.aspx

• SMP Resource Center: www.smpresource.org