Revisions to the CMS MA and Part D Marketing Guidelines
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- **Advocacy** – Bring the experiences of Medicare beneficiaries to the public, and especially legislators and their staff at federal and state levels, through media and educational campaigns.

- **Policy** – Conduct public policy research to support recommendations for improving rights and protections for Medicare beneficiaries and their families.

- **Education** – Provide timely and high-quality information on Medicare through our website, fact sheets, policy briefs and educational workshops.

- **Senior Medicare Patrol** – Medicare fraud prevention education and outreach.
Learning Objectives

• Overview of relevant current Medicare Communications and Marketing Guidelines (MCMGs) AEP 2020

• Identify recent 8/2019 changes to MCMGs

• Overview of potential solicitor misconduct you may expect to see during AEP 2020

• Process and procedures for reporting potential abuse
CMS: Communications and Marketing

“Communications”: All materials/activities that provide information to current and prospective enrollees

“Marketing” is redefined: subset of communications that have the intent to influence a beneficiary's decision about their healthcare coverage AND includes marketing information

Content AND intent
Some of the Basic Things That Never Change: AEP 2019

- Use of scare tactics
- Misrepresent role or identity or both
- Misrepresent material facts relating to target MA Plan
- Failure to disclose MA Plan replaces traditional Medicare
- Intentional targeting of dual eligible switching them to plans not suitable for their needs
- “Steering” patients to plans favorable to provider
“Medicare beneficiaries are being signed-up for plans without their consent or knowledge through a variety of means including forged applications. Agents are using scare tactics to convince people to join plans such as saying you will lose your Medicaid unless you join, or are being lied to, such as Medicare is going private, you must pick a plan. Individuals who sought one type of product such as a PDP or a Medigap go to an agent and end up in a Medicare Advantage plan that they did not want.

Individuals dually eligible for Medicare and Medicaid, who in most cases already have comprehensive benefits, are being targeted to enroll in plans that may not be suitable for them. And in one of the more common scenarios agents will make sales at senior or disabled housing facilities, either after dropping by unannounced or after presentations arranged under false pretenses. For example, agents will say they are from Medicare and want to talk about changes to the program without disclosing that they are in fact insurance agents selling a product.”

Statement of David Lipschutz, Staff Attorney, California Health Advocates, on June 26, 2007 to the Subcommittee on Oversight and Investigations of the Committee On Energy ad Commerce of the House of Representatives
CMS Edits to MCMGs AEP 2020

- Plans prohibited from providing
  - Inaccurate or misleading information
  - OR
  - Engaging in activities that could mislead or confuse beneficiaries
  - OR
  - Misrepresent plan sponsor (MCMG Section 30.7)
CMS Edits to MCMGs AEP 2020

- Removes “materiality” requirement for inaccurate or misleading representations
- Leaves interpretation subjective
  - What would a person similarly situated as beneficiary understand representation to mean?

AND adds activities to the equation
CMS Edits to MCMGs AEP 2020

- Effective August 6, 2019, marketing meetings immediately following educational events at same locale (MCMG Section 50.1) now permissible.
- Effective August 6, 2019, unsolicited contact authorization (letter or email) can be open-ended as opposed to event-specific (MCMG Section 40.2).
## CMS Do’s & Don’ts

<table>
<thead>
<tr>
<th>PROHIBITED AGENT/BROKER BEHAVIOR for MA/PD PLANS</th>
<th>APPROPRIATE AGENT/BROKER BEHAVIOR for MA/PD PLANS</th>
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<tbody>
<tr>
<td>Cannot state that they are from Medicare or use words or symbols, including &quot;Medicare&quot; in a misleading manner. For example, they cannot state that they are approved, endorsed or authorized by Medicare, are calling on behalf of Medicare, or that Medicare asked them to call or see the beneficiary.</td>
<td>May call a beneficiary who has expressly given advanced permission (e.g., submission of a business reply card or scope of appointment). The permission applies only to the plan or agent/broker the beneficiary requested contact from and specific to the product type(s) selected/requested.</td>
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<tr>
<td>Cannot solicit potential enrollees door-to-door (in person or via leaflet/flyer).</td>
<td>May call a beneficiary they enrolled in a plan to discuss plan business, as well as discuss the availability of other plan options/types within the same parent organization. Disenrolled beneficiaries may also be called for quality improvement purposes. Under limited circumstances, Low Income Subsidy (LIS) eligible enrollees may be contacted.</td>
</tr>
<tr>
<td>Cannot send unsolicited text messages and leave voicemail messages.</td>
<td>May call or visit beneficiaries who attended a marketing/sales event prior permission is given and documented.</td>
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<tr>
<td>Cannot approach beneficiaries in common areas (i.e., parking lots, hallways, lobbies, sidewalks).</td>
<td>May initiate a phone call to confirm an appointment. A second scope of the appointment must document additional product types of interest to the beneficiary that were not agreed to in advance.</td>
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<tr>
<td>Cannot conduct marketing/sales activities in healthcare settings except in common areas. Restricted areas include, but are not limited to exam rooms, hospital patient rooms, dialysis centers and pharmacy counter areas.</td>
<td>May conduct marketing/sales activities in common areas of healthcare settings. Appropriate common areas include waiting rooms, cafeterias, community or recreational rooms and conference rooms in hospitals, nursing homes, assisted living centers or other congregate housing.</td>
</tr>
<tr>
<td>Cannot make unwanted calls, including contacting beneficiaries under the guise of selling a non-Medicare Advantage (MA) or Non-Prescription Drug Plan (PDP). For example, an agent/broker cannot begin by selling a Medicare Supplement plan and then turn the conversation to MA or PDP products.</td>
<td>Must secure a signed scope of appointment (SOA) prior to the appointment, when practicable. A beneficiary may sign a SOA at a marketing/sales event for a future appointment. Marketing/sales events do not require documentation of beneficiary agreement.</td>
</tr>
<tr>
<td>Cannot provide meals at marketing/sales events.</td>
<td>Refreshments and snacks may be provided at marketing/sales events.</td>
</tr>
</tbody>
</table>

[https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html](https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html)
Do’s and Don’ts Highlights

- CANNOT MISREPRESENT self to the beneficiary
- CANNOT conduct marketing at educational events
- CANNOT provide meals at marketing/sales events
- CANNOT offer “free” services/items greater than $15 or $75 for year
- No “camp outs” in medical provider offices
Do’s and Don’ts Highlights (cont’d)

• CANNOT solicit “door to door” (includes putting flyers on doors)
• CANNOT approach beneficiaries in common areas (parking lots, streets, sidewalks, lobbies, hallways, etc.)
• CANNOT send unsolicited texts or make unsolicited calls
Potential Violations You May See

- Increased telemarketing calls by Field Marketing Organizations (FMOs) using old lead lists.
- Increased use of marketing flyers with no plan name noted to advertise Medicare 101 or to learn about new Medicare changes.
- Increased complaints about being enrolled without consent or knowledge.
- More “educational” meetings immediately followed by enrollment sessions in the same location targeting beneficiaries specific to: regions, providers, and solicitors.
Potential Violations You May See (cont’d)

- Increased marketing activity to beneficiaries occurring from and within medical offices, such as
  - Solicitor in the providers’ medical office enrolling beneficiaries (“camp out” scenario)
  - Beneficiaries called by their provider for an appointment, and upon arrival, are referred to a solicitor for enrollment
  - Beneficiaries told they cannot see their provider unless they change their health coverage
Clues From The Scene

• My podiatrist told me I couldn’t see him/her.
• My doctor’s receptionist brought me over to some person.
• I saw a group of people when I walked into the grocery store.
• They told me I could get a free grocery card or tamales or some other ”free” item or service.
Clues From The Scene (cont’d)

- They told me this plan was in addition to my Medicare.
- They told me I could get “free” dental or glasses.
- I got this note on my door or in my mailbox or posted on community bulletin board.
- My friend told me about this person.
Be A First Responder!

- Be NEUTRAL when gathering information.
- Collect As Much Information As Possible
  - Who was the solicitor?
  - Was there more than one solicitor?
  - Authorization granted?
  - When?
  - Where?
  - What was said?
  - What did beneficiary understand or believe?
Be A First Responder! (cont’d)

• Collect As Much Information As Possible

• How long was the presentation or meeting?
• Who else was present?
• Were any documents left with the beneficiary (business card, provider directory, enrollment form, scope of appointment form, etc.) that you can include with your referral?
Report Event to SMP

- Submit information to SMP
- For states outside of California, find your state’s SMP at [www.smpresource.org](http://www.smpresource.org)
- For California: Sandy Morales, [smorales@cahealthadvocates.org](mailto:smorales@cahealthadvocates.org)
- SMP has to report the incident to stakeholders
- SMP tracks reports and reports results
THANK YOU!
QUESTIONS?