

Senior Medicare Patrol – MA Plan Solicitor Misconduct Update: AEP 2021

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California
Health
Advocates

- **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

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Learning Objectives

- Overview of relevant current Medicare Communications and Marketing Guidelines (MCMGs) AEP 2021
- Identify recent 8/2020 changes to MCMGs
- Overview of potential solicitor misconduct you can expect to see during AEP 2021

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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

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Some of the Basic Things That Never Change: AEP 2020

- 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

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CMS MCMGs AEP 2021

- 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)

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CMS MCMGs AEP 2021

- 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

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CMS MCMGs AEP 2021

- **NO CHANGES FROM 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).

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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

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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

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CMS Changes FOR AEP 2021

- Beneficiaries with ESRD now eligible for MA Plans
- Network Adequacy Rules Loosened
- Effectively phases out D-SNP lookalike plans
- Codifies Special Enrollment Periods (SEP) and adds poor performer plans and in receivership

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Impact of CMS CHANGES FOR AEP 2021

- Dilutes protections for patients' access to care (reasonable time and distance standards)
- Too few providers, too far away, benefitting few members
- Plans will face difficulty creating appropriate provider networks for newly eligible ESRDs

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Appropriate Enrollment Process

- Beneficiary initiated contact with MA Plan and/or solicitor
- Beneficiary consented to appointment
- Solicitor follows MA Plan marketing policy and enrollment procedures when presenting MA Plan to Beneficiary
- Solicitor completes Enrollment Application (5-6 page document) with Beneficiary, Scope of Appointment Form
- Solicitor reviews Provider Network and Drug Formularies
- Presentation should last approximately 1.5-2 hours

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What Documents Should Beneficiary Have?

- Copy of the Enrollment App signed by Beneficiary
- Copy of the Scope of Appointment Form signed by Beneficiary
- Provider Directory
- Pharmaceutical Formulary
- Coverage Booklet

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Activity You May See For AEP 2021

- Increased telemarketing calls by Field Marketing Organizations (FMOs) using old lead lists.
- Increased complaints about being enrolled without consent or knowledge.
- Increased complaints about solicitation in medical offices.
- Less individual “educational” meetings immediately followed by enrollment targeting beneficiaries specific to: regions, providers, and solicitors.

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Activity You May See For AEP 2021 (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

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Activity You May See For AEP 2021 (cont'd)

- Shift from personal meetings to electronic platforms
 - Boosted ads through FaceBook
 - Direct Instant Messaging through Instagram
 - Customized ads on mobile devices from social media sites
 - Unsolicited Email Communications
 - Increased unsolicited phone calls from telecenters

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Platform Shift Increases Risk of Cyber Threats

- Email Phishing Schemes
- <https://resources.infosecinstitute.com/7-security-awareness-tips-for-senior-citizens>

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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.

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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.

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Report Event to SMP

- Submit information to SMP
- SMP has to report the incident to stakeholders
- SMP tracks reports and reports results
- SMP Hotline in California 1-855-613-7080
- To reach your state SMP visit: www.smpresource.org

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Message From Sandy Morales, SMP

Dear SMP Liaisons and Partners,

Thank you for your referrals!

Keep them coming!

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Beneficiary/Family Member/Caregiver

- calls 800# on a TV Commercial to inquire about a plan
- responds to a postcard in the mail about Medicare changes that appears to be government affiliated
- receives a cold call from an agent or broker about Medicare benefits they are entitled to
- responds to a Facebook ad about health insurance
- prior to COVID, agent or broker showed up to the home with out an appointment

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Misconduct Is When Solicitor

- enrolls a beneficiary into a plan without their permission.
 - switched from FFS Medicare to MA Plan
 - switched out of current MA plan into another one
 - switched out of current Part D plan into another Part D plan
 - Medigap issues
- changes the scope of appt.
 - inquired about Part D plans, but agent is discussing MA plans
- uses Incentives to convince a person to sign up for a specific plan.
 - offered free trips, gift cards, or meals in return for signing up

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Misconduct Is When Solicitor (cont'd)

- misrepresents the plan's benefits
 - lied to about providers and/or specialists in the network
 - claimed person will save \$ on prescriptions costs
- uses scare tactics
 - threatened the person to sign up or they will lose their Medicare

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Harm to Beneficiaries

- Medicare may stop paying claims.
- Switched to a different insurance plan.
- Can't afford prescriptions.
- No access to see PCP and/or specialists.
- Out-of-network bills.

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Dealing With Potential Misconduct

Two issues:

1. Place the beneficiary back into the plan of choice.

Requests are sent to CMS SF DOI Liaison. Requests must involve marketing misrepresentation.

2. Report agent/plan misconduct to investigative entities.

Referred to Dept. of Managed Health Care, CA Dept. of Insurance & in some cases, the OIG.

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Department of Managed Health Care

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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?

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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?

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