



CMA WEEKLY ALERT – NOVEMBER 22, 2006

REVIEW THE RULES: DON'T GET CAUGHT IN MEDICARE HEALTH PLAN MARKETING SCAMS

Introduction

Marketing scams for Medicare prescription drug plans (PDPs) and Medicare Advantage plans (MAs), including MA plans with prescription drug coverage (MA-PDs), are not new to the 2006 annual enrollment period. For over a year advocates have complained about such scams as going door-to-door at senior housing facilities to solicit enrollment in MA plans, enrolling beneficiaries in a more costly PDP than the one they wanted to enroll in, or enrolling beneficiaries in an MA-PD when they wanted to enroll in a PDP. The most recent scam involves Part D sponsors telling beneficiaries across the country that they must have a home visit to enroll in one of their PDPs. The agents who make the home visit then engage in a hard sell to enroll the beneficiary in one of the sponsor's Medicare Advantage plans rather than in the PDP the beneficiary wanted.

The Centers for Medicare & Medicaid Services (CMS) has developed Marketing Guidelines for Medicare Advantage and prescription drug plans¹ that address the appropriateness of different sales tactics. The CMS Enrollment Guidance² also provides instructions on permissible enrollment mechanisms. By understanding the scope of health plan activities, advocates can help protect the right of beneficiaries to choose how they will receive all of their Medicare health benefits, including their prescription drug coverage.

CMS Guidelines allow PDP and MA plan sponsors to:

- Advertise the plans they offer through
 - Television and radio ads
 - Billboards and other outdoor advertising
 - Newspaper and magazine ads
 - Flyers, posters, brochures
 - Internet ads
- Send unsolicited direct mail to enrollees
 - Direct mail includes postcards and reply cards but *not enrollment forms*
 - Plans are allowed limited follow-up letters
- Telephone beneficiaries directly (make “cold calls”), with limitations
 - Plans cannot call a beneficiary who is listed on national and state “do not call” lists or who requests not to be called again.
 - Plans cannot ask for personal information over the phone, including address, social security number, drugs taken, and financial information
 - Plans cannot enroll a beneficiary over the telephone if the beneficiary did not initiate the telephone call.
- Provide for telephone enrollment if the beneficiary calls the plan directly to enroll

¹ The Marketing Guidance is available at
<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf>.

² The Enrollment Guidance is available at
<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/CurrentPDPEnrollmentGuidance.pdf>.

- Beneficiaries must be advised that they are completing an enrollment
- The plan must record the enrollment.
- Written confirmation must be sent to the beneficiary
- Provide for on-line enrollment
 - Enrollment must be via a secure web site that meets CMS guidelines
 - The site must advise beneficiaries that they are completing an enrollment into a plan
- Conduct a home visit, *but only if the plan has permission from the beneficiary to visit the beneficiary's home*
- Conduct presentations at a pharmacy, long-term care facility, doctor's office, hospital, as long as
 - The presentations are conducted in a common area.
 - Common areas include hospital or nursing home cafeterias, community or recreational rooms, and conference rooms. In a retail pharmacy, the common area could be the space outside of where customers wait for services or interact with pharmacy providers or obtain medications.
- Offer "value added items and services" (VAIS), including health related items such as discounts on eyeglasses, but only if the VAIS
 - do not meet the definition of Medicare benefits under the Medicare program and
 - are of minimal value or cost.

CMS Guidelines do NOT allow plan sponsors to

- Go door-to-door to solicit enrollment.
- Initiate a home visit and/or require a home visit to explain plan options or plan benefit structures, or for purposes of enrollment
- Process an enrollment over the telephone if
 - the plan sponsor solicited the call
 - the call was not initiated by the beneficiary in order to enroll in a plan
- Offer free gifts, cash, gift cards, or other prizes to encourage beneficiaries to enroll, with limited exceptions
 - Drawings/prizes/giveaways must be made available to all participants regardless of whether they enroll.
 - All gifts must have a retail value that is less than \$15.
 - A prize with a retail value in excess of \$15 must be made available to the general public and not just to Medicare beneficiaries.

Advocates who encounter marketing and enrollment problems should

- Contact their state health insurance commissioner, particularly in regard to inappropriate activities by specific insurance agents.
- Contact the plan
- Complain to their CMS regional office and/or to the Medicare ombudsman's office.
- Complain to their senators and members of Congress. Congress has authority to make sure that CMS exercises its oversight and enforcement powers against plan sponsors that continuously disregard its rules and policies.

Beneficiaries who enroll in a plan they do not want because of marketing scams or misinformation may be entitled to a special enrollment period (SEP) to change to the plan of their choice. These SEPS are awarded by CMS on a case by case basis. Advocates should therefore contact the CMS regional office to apply for this SEP.

For more information, contact attorney Vicki Gottlich (vgottlich@medicareadvocacy.org) in the Center for Medicare Advocacy's Washington DC office at (202) 216-0028.