



CALIFORNIA HEALTH ADVOCATES  
Medicare: Policy, Advocacy and Education

**JUSTICE IN AGING**  
FIGHTING SENIOR POVERTY THROUGH LAW



# Protecting Clients from Improper Medicare Marketing—What Advocates Need to Know

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
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- Find materials for this training and past trainings by searching the [Resource Library](https://justiceinaging.org/resource-library), [justiceinaging.org/resource-library](https://justiceinaging.org/resource-library). A recording will be posted to [Justice in Aging's Vimeo page](https://Justice%20in%20Aging's%20Vimeo%20page) at the conclusion of the presentation, [vimeo.com/justiceinaging](https://vimeo.com/justiceinaging).
- Enable closed captioning by selecting “CC” from the Zoom control panel.

# Today's Agenda

- Protecting Medicare Beneficiaries from Fraud
  - California Senior Medicare Patrol
  - Micki Nozaki
  - [mnozaki@cahealthadvocates.org](mailto:mnozaki@cahealthadvocates.org)
- Protecting Clients from Improper Medicare Marketing: What Advocates Need to Know
  - Justice in Aging
  - Georgia Burke
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# California Health Advocates

([www.cahealthadvocates.org](http://www.cahealthadvocates.org))

## Policy

- Public policy research to support improving rights and protections for Medicare beneficiaries and their families

## Training

- Information on Medicare through our website, fact sheets, policy briefs and educational workshops

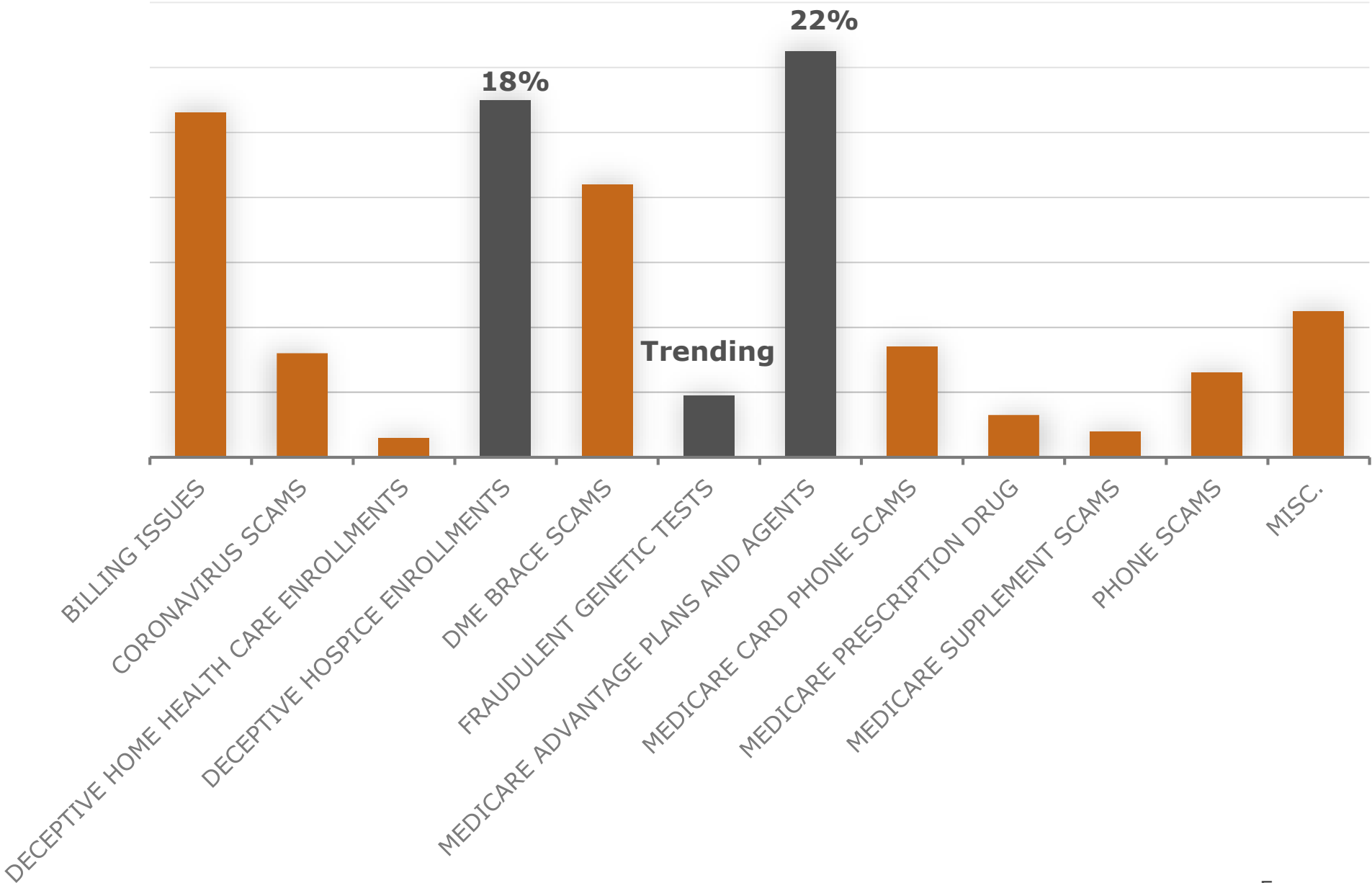
## Advocacy

- Bring the experiences of Medicare beneficiaries to the public, federal and state legislators

## Senior Medicare Patrol

- A national program to educate Medicare and Medi-Cal beneficiaries about how to **prevent, detect and report** healthcare fraud, errors and abuse

# January 2020 to Current



# Hospice Fraud

- Non-terminal beneficiaries enrolled; promised money, free Ensure
- Latino, Tagalog speaking seniors targets of suspicious hospice enrollment
- PT clinic refers non-terminal dementia, Alzheimer's patients to hospice
- Hospital case managers witness hospitalists referring patients to hospice agencies they own or are associated with
- Bottom line
  - Beneficiaries denied needed medications, forced to cancel surgeries
  - Disenrolling from hospice lengthy and tedious

# DNA and Genetic Testing Fraud



- Offers for free braces, plastic Medicare card and DNA testing
- Calls from marketers mailing a poly-genetic test kit
- Scammers calling at midnight, offer braces saying “Medicare is requiring cardiac genetic tests to make sure they’re screening for everything”
- Cold calls offer free Medicare supplies and free mouth swabs paid for by Medicare to determine if certain health problems in genetic lineage
- Online ads for cardiac genetic testing

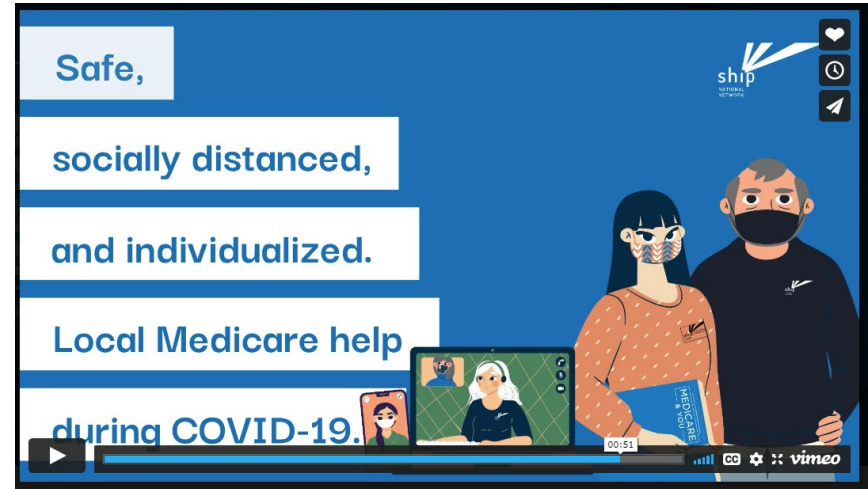
# Improper Medicare Marketing

- Sold Medigap plan to full Medi-Cal beneficiary
- Letter offers MA plan in county that doesn't offer the plan
- 800# TV ad for Medicare; obtain Medicare #, you can get dental and vision coverage if accept a back brace
- Suspicious ads in Penny Saver—"Medicare Giveback Rebate Benefit: Boost Social Security \$1728 per year"
- Agent may have enrolled him in MAPD plan without his permission; now can't get his insulin from the pharmacy



# State Health Insurance Program (SHIP)

- Local, free and unbiased
- Medicare, Medicare Advantage, Medigap, Long Term Care Insurance
- Counseling and enrollment assistance
- Health Insurance Counseling & Advocacy Programs (HICAPs)
  - 800-434-0222
- Outside California (SHIPs)
  - <https://www.shiptacenter.org>



## Medicare Fraud Alert

Protect Yourself from Medicare Fraud

- Protect your Medicare number. Don't give it out, except to your doctor or other health care providers.
- Never give your Medicare number to companies or a person in exchange for free items, services or special offers. It may not be real.
- Never let someone use your Medicare card.
- Medicare will never contact you and ask for personal information over the phone, like your Medicare or bank account numbers.
- If something is wrong or unclear, have someone help you contact your doctor to ask about the charge.

if you were charged incorrectly, call the Senior Medical Patrol to Report fraud:

# 855-613-7080



California Senior Medicare Patrol  
Protecting Medicare Beneficiaries from Fraudulent Health Care Providers


## COVID-19 VACCINE SCAMS

- You likely will not need to pay anything out of pocket to get the vaccine during this public health emergency.
- No one from Medicare or the Health Department will contact you.
- No one from a vaccine distribution site or health care payer, like a private insurance company, will call you asking for your Social Security number or your credit card or bank account information to sign you up to get the vaccine.
- You cannot pay to put your name on a list to get the vaccine.
- You cannot pay to get early access to the vaccine.

Check with your health care provider before paying for or receiving any COVID-19-related treatment.

Report fraud:

# 855-613-7080



California Senior Medicare Patrol  
Protecting Medicare Beneficiaries from Fraudulent Health Care Providers

## A Story About Betty & the Medicare Health Plan

### MAKING THE RIGHT CHOICE

Each year from October 15 to December 7, Medicare offers its beneficiaries the opportunity to make changes in coverage. It's always a good idea to compare your current coverage to see which plan fits best during Open Enrollment. For free, unbiased Medicare counseling, call the Health Insurance Counseling and Advocacy Program (HICAP) at 1-800-434-0222.

**Avoid Medicare Scams!**

Medicare plans must follow rules when they market plans. They cannot:

- Pressure you to join their plan by saying things like "you have to join this plan or you won't have coverage next year"
- Come to your home uninvited.
- Send you unsolicited emails or harass you by telephone.
- Offer you cash or groceries to join their health plan.
- Sell you a non-health related product like an annuity or life insurance policy.
- Sign a health plan enrollment form for you.

If you decide to switch health plans:

- You should make sure that the doctors you want to continue to see will accept your new plan.
- You should make sure that the medications you have been prescribed are included in the new plan's formulary.

Senior Medicare Patrol empowers people like you to become self-directed, informed and confident consumers. To report Medicare fraud or marketing violations, call our SMP hotline at 1-855-613-7080.

Never give your MEDICARE NUMBER to a stranger or to anyone you don't trust!

California Senior Medicare Patrol  
Protecting Medicare Beneficiaries from Fraudulent Health Care Providers  
www.cahealthadvocates.org



## Back Brace Fraud Alert 2019

### CALIFORNIA SENIOR MEDICARE PATROL WARNING!

Beware of Offers for "Back" Braces Covered by Medicare

Individuals offering Medicare "free or low-cost" knee, back and other orthotic braces could be using the medical equipment benefit to commit Medicare fraud and abuse.

855-613-7080

For additional information on healthcare fraud, visit [cahealthadvocates.org](http://cahealthadvocates.org)

California Senior Medicare Patrol  
Protecting Medicare Beneficiaries from Fraudulent Health Care Providers

## Hospice Fraud Alert 2019

### CALIFORNIA SENIOR MEDICARE PATROL WARNING!

Beware of Fraudulent Hospice Enrollments

Individuals promoting hospice enrollment for Medicare beneficiaries who are not terminally ill through cold calls, meetings and educational sessions could be using the hospice benefit to commit Medicare fraud and abuse.

855-613-7080

For additional information on healthcare fraud, visit [cahealthadvocates.org](http://cahealthadvocates.org)

California Senior Medicare Patrol  
Protecting Medicare Beneficiaries from Fraudulent Health Care Providers

## Testing Scam 2019

### CALIFORNIA SENIOR MEDICARE PATROL WARNING!

Individuals promoting genetic testing of Medicare beneficiaries through cold calls, meetings, and educational sessions could be using these tests to commit Medicare fraud and abuse.

Ask your doctor if genetic testing is medically necessary for you.

855-613-7080

For additional information on healthcare fraud, visit [cahealthadvocates.org](http://cahealthadvocates.org)

California Senior Medicare Patrol  
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[www.cahealthadvocates.org](http://www.cahealthadvocates.org) – 855-613-7080

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

# To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

# Roadmap

- Making contact: When and where can an agent/broker contact a Medicare beneficiary?
  - General rules
  - Exceptions
- Problems and Violations: What are some typical problems? How can they be addressed?

**Special Update:** California changes affecting your low income clients and how you counsel them.



# Medicare Marketing—Making Contact

# Source of Guidance

- Regulations: 42 C.F.R. § 422, § 423, and § 417
- Medicare Communications and Marketing Guidelines (MCMG)
- Additional state law rules may apply
- Applies to all Medicare Advantage, Part D, and Medicare-Medicaid plans, except PACE. Additional specific guidance re Medicare-Medicaid plans (e.g., Cal MediConnect)

# Basic Prohibitions

- 422.2264 & 423.2264 – may not use door-to-door solicitation, approach potential enrollees in common areas, or use telephonic solicitation, including text messages
- Scope of Appointment (SOA) parameters (and documentation) are required for all one-on-one appointments, regardless of venue



# Exceptions to Basic Prohibitions

- Calls to current enrollees, including:
  - Calls to enrollees in one Medicare product about another Medicare product by the same sponsor
  - Calls to enrollees in commercial insurance product (or in Medicaid product) about Medicare products by the same sponsor (e.g. people aging into Medicare).
  - In some cases, with CMS approval, plans can call LIS enrollees who are being reassigned to encourage them to remain with the plan.

# Basic Permitted Activities

- Ads: Radio, TV, print, sides of buses, billboards, etc.
- Emails if they have an opt out
- Educational events
- Sales events w/ notice to CMS
- Individual appointments (w/ Scope of Appointment)

# Permitted Activities: Health Care Settings (1 of 3)

- Providers (e.g. doctors) can “answer questions or discuss the merits of a plan or plans” with their patients
- Providers can send letters to patients saying “We participate in Plan X, Plan Y, and Plan Z”
- Providers can display plan promotional materials and enrollment forms in provider offices as long as it is in outer offices, not where patients are being examined or treated
- Plans may conduct sales activities in common areas of health care settings, including waiting rooms

# Prohibited Activities: Health Care Settings (2 of 3)

- Plans cannot provide inducements for providers to recommend their plan
- Providers cannot offer inducements to their patients to enroll in a particular plan. Plans must advise network providers to remain neutral when discussing plans with patients
- Providers may not collect or submit enrollments

# Prohibited Activities: Health Care Settings (3 of 3)

- Providers cannot mail letters to patients or call them recommending one plan over another
- Agents/brokers cannot stake out provider offices or “ambush” patients

PLANS HAVE THE DUTY TO CONTROL  
MARKETING BY NETWORK PROVIDERS  
AND BY BROKERS AND AGENTS

# Educational Events and Sales Events

- **Educational events** may not include marketing of a particular plan. May include business cards and sign-ups for sales events or sales calls, including Scope of Appointment (SOA) forms
- **Sales events** are marketing. Scripts and presentations must be submitted to CMS
- Nominal gifts (\$15) are OK or raffles where prize value is not more than \$15 x expected number of participants. Snacks OK; meals NOT OK.
- Sales events can immediately follow educational events

# Individual Appointments

- Scope of Appointment required for both in-person and telephone meetings
- Topics of discussion may not exceed what is included SOA
- May not use appointment to sell non-Medicare products

# Special Protections for LEP Seniors

- MCMG 30.1 – “may not discriminate based on race, ethnicity, national origin,” etc. and “must comply with their obligations under other federal anti-discrimination rules and requirements”
- MCMG 30.3 – “designated materials...must make available in any language that is the primary language of at least five (5) percent of a Plan’s/Part D sponsor’s” service area





# Dealing with Problems

# Areas of Concern

- Marketing to people with limited English proficiency
- Excessive marketing to low income beneficiaries year round
- Saturation of TV ads and infomercials
- Misinformation from and/or outside influence of providers
- Goliath (agents/brokers) and David (HICAPs/SHIPs)

# Some Typical Broker Issues

- Failure to ensure that beneficiary knows whether providers are in-network
- Failure to ensure that beneficiary really understands the difference between Medicare Advantage and Original Medicare
- Unsolicited contacts: working a senior building, claiming that someone else recommended contacting the individual, etc.

# Example: Fraud

- 76-year-old Spanish speaking consumer with Medicare only was enrolled in a plan by an insurance agent
- He understood that the MA plan was only a supplemental transportation benefit for Medicare beneficiaries
- Agent did not explain how a MA plan works
- Consumer showed his Medicare card to the agent but does not remember signing any document or agreeing to be part of the new plan
- Agent had enrolled him without his permission
- After the change, he was unable to see his cardiologist and get his heart medication. His provider is not in-network; no local cardiologists accept his new plan

# Example: Unsolicited Marketing, Misrepresentation

- 70 year old, dual eligible, disabled, Spanish speaking individual was approached by an unsolicited agent in a senior apartment housing complex who enrolled her into a Medicare Advantage plan
- This agent did not explain how Medicare Advantage works and as a result, she was unable to see her Primary Care Provider

# Addressing Problems

- Complaint Tracking Module/ 1-800-Medicare
- CMS Region 9
- California Department of Managed Health Care (DMHC)
- Goals:
  - Disenrollment (may need retroactive)
  - Stop bad actor
  - More and better training/oversight by plan



# California Developments

# Medi-Cal Eligibility

- Already happening: Medi-Cal income limit is 138% of federal poverty level
- Around the corner: Elimination of the asset test for all Medi-Cal programs
  - July 1, 2022: Asset limit will be \$135,000 for an individual and \$65,000 for each additional family member
  - July 1, 2023: Asset limit will be completely abolished for all aged and disabled Medi-Cal programs

These changes mean no more “cliff” for people aging into Medicare from MAGI (expansion) Medi-Cal.



# Move to D-SNPs

- Down the road: Throughout CA, D-SNPs with matching Medi-Cal managed care plans for dual eligibles
  - Cal MediConnect is scheduled to end
  - D-SNP enrollment will be voluntary. Unclear at this time whether there will be any passive enrollment with opt-out

# Questions?

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Want to receive Justice in Aging trainings and materials?

***Join Our Network!***

Go to [justiceinaging.org](https://justiceinaging.org) and hit “**Sign up**” (upper left corner) or send an email to [info@justiceinaging.org](mailto:info@justiceinaging.org).