

fraud, including potential violations of the anti-kickback statute for federal health care programs. This Special Fraud Alert specially highlights the statutory provision prohibiting DME suppliers from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item.

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SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections. To reduce fraud and abuse in the federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

The OIG issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, the OIG

has published in the **Federal Register** the texts of 11 previously-issued Special Fraud Alerts.¹

This Special Fraud Alert focuses on section 1834(a)(17) of the Social Security Act, which prohibits suppliers of DME, except under limited circumstances, from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, and possible telemarketing practices by DME suppliers through the use of independent marketing firms.

II. Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (January 2003)

Section 1834(a)(17) of the Social Security Act prohibits suppliers of durable medical equipment (DME) from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, except in three specific situations: (i) the beneficiary has given written permission to the supplier to make contact by telephone; (ii) the contact is regarding a covered item the supplier has already furnished the beneficiary; or (iii) the supplier has furnished at least one covered item to the beneficiary during the preceding fifteen months. Section 1834(a)(17)(B) also specifically prohibits payment to a supplier who knowingly submits a claim generated pursuant to a prohibited telephone solicitation. Accordingly, such claims for payment are false and violators are potentially subject to criminal, civil, and administrative penalties, including exclusion from federal health care programs.

Notwithstanding the clear statutory prohibition, the Office of Inspector General has received credible information that some DME suppliers continue to use independent marketing firms to make unsolicited telephone calls to Medicare beneficiaries to market DME. Suppliers cannot do indirectly that which they are prohibited from doing directly. Except in the three specific circumstances described in the statute, section 1834(a)(17) prohibits unsolicited telemarketing by a DME supplier to Medicare beneficiaries, whether contact with a beneficiary is made by the supplier directly or by another party on the DME supplier's behalf. Moreover, a DME supplier is responsible for verifying that marketing activities performed by third parties with whom the supplier contracts or otherwise does business do not involve prohibited activity and that information purchased from such third parties was neither obtained, nor derived, from prohibited activity. If a claim for payment is submitted for items or services generated by a prohibited solicitation, both the DME supplier and the telemarketer are potentially liable for criminal, civil, and administrative penalties for causing the filing of a false claim.

What to do if you Have Information About Fraud and Abuse Against Medicare or Medicaid Programs

If you have information about DME suppliers or telemarketers engaging in any of the activities described above, contact any of the regional offices of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Regional offices	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617-565-2664.
New York	NY, NJ, PR, VI	212-264-1691.
Philadelphia	PA, MD, DE, WV, VA, DC	215-861-4576.
Atlanta	GA, KY, NC, SC, FL, TN, AL	404-562-7603.
Chicago	IL, MN, WI, MI, IN, OH	312-353-2740.
Dallas	TX, NM, OK, AR, LA, MS	214-767-8406.
Kansas City	CO, UT, WY, MT, ND, SD, NE, KS, MO, IA	816 426-4000.
Los Angeles	AZ, NV, So. CA, HI,	714-246-8302.
San Francisco	No. CA, AK, OR, ID, WA, AK	415-437-7961.

¹ All OIG Special Fraud Alerts are available on the Internet at the OIG Web site at <http://oig.hhs.gov/fraud/fraudalerts.html#1>.