

# Members of the public to help stop insurers' bogus Medicare Advantage sales tactics

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After an unprecedented crackdown on misleading advertising claims by insurers selling private Medicare Advantage and drug plans, the Biden administration hopes to unleash a special weapon to make sure

companies follow the new rules: you.

Officials at the Centers for Medicare & Medicaid Services are encouraging seniors and other members of the public to become fraud detectives by reporting misleading or deceptive sales tactics to 800-MEDICARE, the agency's 24-hour information hotline. Suspects include postcards designed to look like they're from the government and TV ads with celebrities promising benefits and low fees that are available only to some people in certain counties.

The new rules, which took effect Sept. 30, close some loopholes in existing requirements by describing what insurers can say in ads and other promotional materials as well as during the enrollment process.

Insurance companies' advertising campaigns kick into high gear every fall, when seniors can buy policies that take effect Jan. 1. People with traditional government Medicare coverage can add or change a prescription drug plan or join a Medicare Advantage plan that combines drug and medical coverage.

Although private Advantage plans offer extra benefits not available under the Medicare program, some services require prior authorization and beneficiaries are confined to a network of health care providers that can change anytime. Beneficiaries in traditional Medicare can see any provider. The open enrollment season ends Dec. 7.

Catching Medicare Advantage plans that step out of line isn't the only reason to keep an eye out for marketing scams. Accurate plan information can help avoid enrollment traps in the first place.

Although insurers and advocates for older adults have generally welcomed the new truth-in-advertising rules, compliance is the big challenge. Expecting beneficiaries to monitor insurance company sales

itches is asking a lot, said Semanthie Brooks, a social worker and advocate for [older adults](#) in northeast Ohio. She's been helping people with Medicare sort through their options for nearly two decades. "I don't think Medicare beneficiaries should be the police," she said.

Choosing a Medicare Advantage plan can be daunting. In Ohio, for example, there are 224 Advantage and 21 drug plans to choose from that take effect next year. Eligibility and benefits vary among counties across the state.

"CMS ought to be looking at how they can educate people, so that when they hear about benefits on television, they understand that this is a promotional advertisement and not necessarily a benefit that they can use," Brooks said. "If you don't realize that these ads may be fraudulent, then you won't know to report them."

The agency relies on beneficiaries to help improve services, Meena Seshamani, CMS' Medicare director, told KFF Health News in a written statement. "The voices of the people we serve make our programs stronger," she said. Beneficiary complaints prompted the government's action.

"That's why, after hearing from our community, we took new critical steps to protect people with Medicare from confusing and potentially misleading marketing."

Although about 31 million of the 65 million people with Medicare are enrolled in Medicare Advantage, even that may not be enough people to monitor the tsunami of advertising on TV, radio, the internet, and paper delivered to actual mailboxes. Last year more than 9,500 ads aired daily during the nine-week marketing period that started two weeks before enrollment opened, according to an analysis by KFF.

More than 94% of the TV commercials were sponsored by health insurers, brokers, and marketing companies, compared with only 3% from the federal government touting the original Medicare program.

During just one hourlong Cleveland news program in December, researchers found, viewers were treated to nine Advantage ads.

For the first time, CMS asked insurance and marketing companies this year to submit their Medicare Advantage television ads, to make sure they complied with the expanded rules. Officials reviewed 1,700 commercials from May 1 through Sept. 30 and nixed more than 300 deemed misleading, according to news reports.

An additional 192 ads out of 250 from marketing companies were also rejected. The agency would not disclose the total number of TV commercials reviewed and rejected this year or whether ads from other media were scrutinized.

The new restrictions also apply to salespeople, whether their pitch is in an ad, written material, or a one-on-one conversation.

Under one important new rule, the salesperson must explain how the new plan is different from a person's current health insurance before any changes can be made.

That information could have helped an Indiana woman who lost coverage for her prescription drugs, which cost more than \$2,000 a month, said Shawn Swindell, the State Health Insurance Assistance Program supervisor of volunteers for 12 counties in east-central Indiana. A plan representative enrolled the woman in a Medicare Advantage plan without telling her it didn't include drug coverage because the plan is geared toward veterans who can get drug coverage through the Department of Veterans Affairs instead of Medicare. The woman is not

a veteran, Swindell said.

In New York, the Medicare Rights Center received a complaint from a man who had wanted to sign up just for a prepaid debit card to purchase nonprescription pharmacy items, said the group's director of education, Emily Whicheloe. He didn't know the salesperson would enroll him in a new Medicare Advantage plan that offered the card. Whicheloe undid the mistake by asking CMS to allow the man to return to his previous Advantage plan.

Debit cards are among a dizzying array of extra non-medical perks offered by Medicare Advantage plans, along with transportation to medical appointments, home-delivered meals, and money for utilities, groceries, and even pet supplies. Last year, plans offered an average of 23 extra benefits, according to CMS. But some insurers have told the agency only a small percentage of patients use them, although actual usage is not reportable.

This month, CMS proposed additional Advantage rules for 2025, including one that would require insurers to tell their members about available services they haven't used yet. Reminders will "ensure the large federal investment of taxpayer dollars in these benefits is actually making its way to beneficiaries and are not primarily used as a marketing ploy," officials said in a fact sheet.

Medicare Advantage members are usually locked into their plans for the year, with rare exceptions, including if they move out of the service area or the plan goes out of business. But two years ago, CMS added an escape hatch: People can leave a plan they joined based on misleading or inaccurate information, or if they discovered promised benefits didn't exist or they couldn't see their providers. This exception also applies when unscrupulous plan representatives withhold information and enroll people in an Advantage policy without their consent.

Another new rule that should prevent enrollments from going awry prohibits plans from touting benefits that are not available where the prospective member lives. Empty promises have become an increasing source of complaints from clients of Louisiana's Senior Health Insurance Information Program, said its state director, Vicki Dufrene.

"They were going to get all these bells and whistles, and when it comes down to it, they don't get all the bells and whistles, but the salesperson went ahead and enrolled them in the plan."

So expect to see more disclaimers in advertisements and mailings like this unsolicited letter an Aetna Medicare Advantage plan sent to a New York City woman: "Plan features and availability may vary by service area," reads one warning packed into a half-page of fine print. "The formulary and/or pharmacy network may change at any time," it continues, referring to the list of covered drugs. "You will receive notice when necessary."

However, the rules still allow insurers to boast about their ratings from CMS—five stars is the top grade—even though the ratings do not reflect the performance of the specific plan mentioned in an ad or displayed on the government's Medicare plan finder website. "There is no way for consumers to know how accurately the star rating reflects the specific plan design, specific provider network, or any other specifics of a particular plan in their county," said Laura Skopec, a senior researcher at the Urban Institute who recently co-authored a study on the rating system.

And because ratings data can be more than a year old and plans change annually, ratings published this year don't apply to 2024 plans that haven't even begun yet—despite claims to the contrary.

How to spot misleading Medicare Advantage and drug plan sales pitches



(and what to do about it)

The Centers for Medicare & Medicaid Services has new rules cracking down on misleading or inaccurate advertising and promotion of Medicare Advantage and drug plans. Watch out for pitches that:

- Suggest benefits are available to all who sign up when only some individuals qualify.
- Mention benefits that are not available in the service area where they are advertised (unless unavoidable because the media outlet covers multiple service areas).
- Use superlatives like "most" or "best" unless claims are backed up by data from the current or prior year.
- Claim unrealistic savings, such as \$9,600 in drug savings, which apply only in rare circumstances.
- Market coverage without naming the plan.
- Display the official Medicare name, membership card, or logo without CMS approval.
- Contact you if you're an Advantage or drug plan member and you told that plan not to notify you about other health insurance products.
- Pretend to be from the government-run Medicare program, which does not make unsolicited sales calls to beneficiaries.

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