



# 'Care Share

## Special Fraud Watch: Durable Medical Equipment

**H**ave you received a call trying to sell you something that Medicare will pay for? If you haven't, you will. Section 1834(a)(17)(A) 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, yet MT SMP has received multiple reports of just that occurring. Here we will line out what the rules are, what is happening, and how to report this fraud if it's happening to you.

DME is reusable medical equipment prescribed by your doctor. It includes hospital beds, walkers, back braces, wheelchairs, home oxygen equipment, scooters and prosthetics. Medicare covers DME if you get it from a supplier enrolled in the Medicare program.

DME sent by a supplier should be prescribed by your doctor, not the other way around. DME suppliers can only call you if: (i) you have given written permission to the supplier to make contact by telephone, (did you respond to a postcard in the mail?); (ii) the contact is regarding a covered item that the supplier has already furnished you; or (iii) the supplier has furnished at least one covered item to you during the preceding 15 months. Section 1834(a)(17)(B) specifically prohibits telephone solicitation and can result in criminal, civil, and administrative penalties, including exclusion from Medicare altogether.

With these rules in place, you may be asking, "Then why are they calling me?" According to a Special Fraud Report, the Inspector General's

Office (OIG) has received credible information that some DME suppliers use independent marketing firms to make the unsolicited telephone calls to Medicare beneficiaries. It goes on to state that except in the three specific circumstances described above, unsolicited telemarketing by a DME supplier to Medicare beneficiaries is prohibited, whether contact was made by the supplier directly or by another party on the DME supplier's behalf.

With the rules being very clear, why is everyone getting calls about back braces and the like? There isn't a simple answer, but as with most things, you follow the money. Let's begin by explaining competitive bidding. The Durable Medical Equipment, Prosthetics, Orthotics & Supplies (DMEPOS) Competitive Bidding Program was mandated by Congress through the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The purpose was to reduce beneficiary out-of-pocket expenses and save the Medicare program money while ensuring beneficiary access to quality items and services.

Under the program, a competition among suppliers who operate in a particular competitive area is conducted and contracts are awarded to Medicare suppliers who offer the best price and meet applicable quality and financial standards. Contract suppliers must agree to accept assignment (accept the amount that Medicare approves as full payment) on all claims for bid items. The benefit to this is that all suppliers are thoroughly screened. The downside is that the lowest bids would get the contract, (usually larger companies who can

afford a low bid). This could cause lesser service to the beneficiary because there was no competition for companies who had the contracts, and there were so few of them in an area that beneficiaries had little choice of who they could get their DME from.

Since not all items were under the competitive bidding rules, like back braces, suppliers could sell those to anyone regardless. They were, and are, still subject to Section 1834(a)(17)(A) of the Social Security Act, however when questioned by a reporter, the owner of a medical supply company said that some suppliers were reacting to lower Medicare reimbursements for testing strips by aggressively marketing other equipment, such as back braces, that are not subject to competitive bidding rules. This resulted in some of the calls you may have received in the past several years.

In 2019 we currently have two other compounding issues, which includes a temporary break in the competitive bidding program until 2020. As of January 1, 2019, beneficiaries may receive DMEPOS items from any willing supplier.

In addition, you are being impacted by a change in rules regarding robocalls. In March 2018 the US Court of Appeals for the District of Columbia struck down rules passed in 2015 that expanded the Telephone Consumer Protection Act, which banned the use of auto-dialers (known as robocallers). Reported by CNBC as of January 4<sup>th</sup> of this year, around 48 billion robocalls were made last year to US mobile phone users, which is an astounding 60% increase. With 3-5% of people responding to the automated messages, scammers are making money off of simply being able to reach you.

Though this isn't a new trick, due to the reasons stated above, we can expect it to continue stronger than ever. According to CMS this contributes to the estimated \$60 billion in fraudulent Medicare payments each year.

With the rules frequently being violated, the calls go something like this. You're contacted with an offer of a knee brace. Regardless of whether you decline the brace or not, the supplier faxes the order to your doctor for approval. They may even use their own doctor, (you'll be able to tell by reading your Medicare Summary Notice (MSN)). Because back and knee problems are so common, your doctor may sign off on it. And once they get approval for those, the supplier continues to call and send other orders, or sell your name to another company to do the same.

A woman in Billings received twenty different items from five different providers in a one month period. The doctor on her MSN was no one she'd ever seen. A woman in Lolo received four items this past month. These are just two of the several cases we're working on.

***If you receive a call that pressures you to buy medical equipment you don't want or need, HANG UP.*** It is recommended to not pick up the phone in the first place if you don't know who is calling. Once you are on a call list, the longer you stay on the line, or even the more calls you pick up, the more attractive you are to sell to other lists, resulting in even more calls to you.

***If you receive items in the mail you didn't order, please report it to your local SMP office at 1-800-551-3191.*** Steps to take include sending all items back to sender immediately after writing down all information on the outside of the package or take a picture; call SMP and provide details on the supplier; and provide copies of your MSN that shows the order. Once compiled, we will refer the case directly to the Office of Inspector General who is charged with investigating Medicare fraud.

One case at a time is how we'll put a stop to this fraud, until someone else figures out how to stop them from reaching out to you in the first place.

The Senior Medicare Patrol (SMP) helps to educate Medicare beneficiaries about ways to prevent, detect, and combat Medicare fraud. For more information about Medicare fraud, visit the Stop Medicare Fraud website at [www.stopmedicarefraud.gov](http://www.stopmedicarefraud.gov).