



February 17, 2010

[Name and address redacted]

Re: Updated Special Fraud Alert: Telemarketing  
by Durable Medical Equipment Suppliers

Dear [Name redacted]:

Thank you for your letter concerning the Office of Inspector General's ("OIG") Updated Special Fraud Alert: Telemarketing by Durable Medical Equipment ("DME") Suppliers (the "Updated SFA"). We appreciate the concerns expressed in your letter.

By way of background, OIG uses Special Fraud Alerts as vehicles to identify fraudulent and abusive practices within the health care industry. OIG issued the Updated SFA for the same purpose. It does not articulate a new interpretation of the law.

CMS has issued guidance on the topic of telemarketing by DME suppliers that addresses issues raised in your letter. The guidance is available on CMS's website at <http://www.cms.hhs.gov/MedicareProviderSupEnroll/Downloads/DME%20Supplier%20Telemarketing%20FAQs.pdf>, and a copy has been enclosed for your reference.

Thank you for sharing your views on the Updated SFA. OIG appreciates hearing from concerned stakeholders in the health care industry.

Very truly yours,

/Vicki L. Robinson/

Vicki L. Robinson  
Chief, Industry Guidance Branch

Enclosure

## **Telemarketing Frequently Asked Questions**

**Question 1: Under what circumstances can a DME supplier make telephone contact with a beneficiary regarding a Medicare covered item?**

Answer 1: If the beneficiary gave written permission for the supplier to contact him/her, if the supplier has already provided a covered item to the beneficiary and the supplier is calling the beneficiary about such covered item or if the beneficiary has already received a covered item from the supplier in the last 15 months.

**Question 2: Is a supplier returning a beneficiary's phone call considered an "unsolicited" contact?**

Answer 2: No. In that scenario, the beneficiary initiated the contact and is inviting a response from the supplier.

**Question 3: Is a supplier contacting the beneficiary based on the receipt of a physician order considered an "unsolicited" contact?**

Answer 3: If a physician contacts a supplier on behalf of a beneficiary with the beneficiary's knowledge, and then a supplier contacts the beneficiary to confirm or gather information needed to provide that particular covered item (including delivery and billing information), then that contact would not be considered "unsolicited". Please note that the beneficiary need only be aware that a supplier will be contacting him/her regarding the prescribed covered item, recognizing that the appropriate supplier may not have been identified at the time of consultation.

## **Telemarketing Frequently Asked Questions**

**Question 4: What if a supplier contacts the beneficiary based solely on the physician order (and therefore the contact is without the beneficiary's knowledge that the physician would be contacting a supplier on the beneficiary's behalf)?**

Answer 4: Then that contact would be considered "unsolicited" and, depending on the facts and circumstances of the particular case, may be prohibited.

**Question 5: Does a supplier have to collect and maintain documentation from the physician reflecting that the physician has contacted the supplier with the beneficiary's knowledge?**

Answer 5: No. However, it would be a business decision on the part of the supplier whether to collect and obtain such documentation for their records.

**Question 6: If a supplier makes solicited contact with a beneficiary for a particular covered item, can the supplier speak with the beneficiary about additional covered items during that same contact?**

Answer 6: No. If this is the first contact ever made by the supplier to the beneficiary, then the supplier is prohibited from attempting to solicit the purchase of additional covered items since the supplier only had permission to contact the beneficiary regarding the particular covered item prescribed by the physician. Once the supplier has provided the covered item to the beneficiary, then the exceptions listed in A1 above may be applied.