



Oregon

Kate Brown, Governor

Department of Human Services

Aging & People with Disabilities

Nursing Facility Licensing

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Information Memorandum

Nursing Facility Providers

IM-16-30-NF

Date: November 16, 2016
From: DHS Aging & People with Disabilities – Nursing Facility Licensing
Subject: **Medicare Advantage Plans – Solicitation Concerns
in Nursing Facilities**

Summary:

- Visitor access in Nursing Facilities does not include solicitation. Facilities must monitor for potential solicitation, and act to protect resident rights.
- Changes in Medicare Advantage Plans may impact Medicaid liability and other services.

Dear Administrator –

Instances have been reported of Medicare Advantage Plans visiting residents at the bedside in nursing facilities to solicit the resident to change plans.

Concerns include:

- Adequate choice counseling for residents who may have diminished capacity to understand the complex ramifications of changing plans.
- Residents may have representatives or powers of attorney who should be consulted.
- Medicaid liability and medical transportation are often affected by Medicare plan changes.
- Privacy and adequate informed consent may be seriously compromised by agents making bedside sales cold-calls.

“Assisting People to Become Independent, Healthy and Safe”

An Equal Opportunity Employer

Oregon Administrative Rules:

[411-085-0330 Residents' Rights: Visitor Access](#)

(4) SOLICITATION. This rule is not intended to allow access to persons or organizations whose primary purpose is to solicit purchase of services or products, or solicit contributions, from the residents or staff.

Federal Rules: §483.10 Resident Rights

Note: Revised rules (cited below) are effective 11/28/2016

Relevant excerpts include the following:

§483.10(a) *Residents Rights*. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility, including those specified in this section.

(1) A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. **The facility must protect and promote the rights of the resident.**

(b) *Exercise of rights*. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(1) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.

(f)(4)(v) (v) **The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.**

(Emphasis added.)

To Report Medicare Fraud Concerns:

- The Oregon Senior Medicare Patrol (SMP): 1-855-ORE-ADRC (673-2372) or online www.ADRCofofOregon.org
- HHS Office of Inspector General (OIG): 1-800-HHS-TIPS (447-8477)
- Oregon Department of Consumer and Business Services (DCBS) – Senior Health Insurance Benefits Assistance (SHIBA): 1-800-722-4134
- Oregon DCBS – Division of Financial and Regulation: 1-888-877-4894

CMS created a short, engaging video about enrollment fraud:

<https://youtu.be/iByQfda5PMo>

Administrators are encouraged to share this information with key staff and to maintain collaboration and communication with Medicaid case managers. Please feel free to contact Nursing Facility Licensing with questions about regulatory requirements:

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