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Unscrupulous marketing of Medicare Advantage creates traps for the unwary

Medicare Advantage plans (also known as "MA plans" or "Medicare Part C") are health plans for seniors offered by Medicare-approved companies that provide an alternative to traditional Medicare.

These are "bundled" plans that include Part A (hospital insurance), Part B (medical insurance), and typically prescription drug coverage (Part D).

The benefit of Medicare Advantage plans is that they may have lower out-of-pocket costs than regular Medicare and they may offer additional benefits that regular Medicare doesn't cover, like vision, hearing and dental services. On the other hand, unlike original Medicare, many Medicare Advantage plans require you to see in-network providers and require a referral to see specialists.

But just as Medicare Advantage plans may be beneficial for certain seniors, they're also highly profitable for health insurers that provide them. In recent years, this reality has caused unscrupulous companies selling private Medicare plans to engage in unseemly and sometimes fraudulent tactics to get patients enrolled.

For example, the New York Times reported this year that some marketing companies have posed as the Internal Revenue Service, the Social Security Administration and even Medicare itself, sending what looks like official forms to Medicare beneficiaries and demanding they fill them out and send them back. While it's against the law for telemarketers to cold-call Medicare beneficiaries, once the recipient sends back the form, companies can call them repeatedly to pitch their plans.

Other marketers have provided fraudulent information. For example some TV commercials and mailings claim that switching to a Medicare Advantage plan will increase the recipient's Social Security benefits by reducing their Medicare premiums. But at least one person who took the bait found out that his new plan didn't cover prescription drugs and was hit with a devastating bill when he went to the drugstore.

Meanwhile, many such marketers are apparently directing their pitches at older people with cognitive impairments, including a 94-year-old Missouri woman with dementia who purchased a plan that

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Should spouses have separate trusts or a joint trust?

A "trust" is an arrangement in which a third party called a "trustee" holds assets on behalf of someone else, known as a "beneficiary." Depending on the terms, the trustee generally manages the assets and distributes income generated by the trust. Trusts can be a useful estate-planning tool because they enable your heirs to benefit from certain assets without the tax implications they might encounter by inheriting the property outright through a will.

Many married couples place their assets in trust for this reason, and because it saves time and court fees associated with the probate process. But what is the best way to do this?

One option is for a couple to place marital assets together in a "joint revocable living trust" or "joint trust" that transfers their assets to themselves as co-trustees. While they're alive and competent, each spouse has full control over the assets. When one spouse dies, the surviving spouse continues as trustee with full control. Upon the surviving spouse's passing, a designated successor trustee will use the remaining assets to settle any debts and distribute what's left as directed by the trust document. This is all done without any involvement by the court.

Other couples opt to separate their marital estate into two separate trusts, protecting the assets of one spouse from the other spouse's creditors. Of course the mechanics of this depend on how the assets are titled. Each spouse is required to manage their own trust, but they can name the other spouse as co-trustee so they both can control all assets.

What are the pros and cons of each? Separate trusts may be a good option for couples who own separate property that they brought into the marriage, either from inheritances or previous marriages, but they can be more expensive and more complicated to administer.

Joint trusts, on the other hand, allow for more flexibility. For example, even if spouses have their own separate property, they can still transfer it into a joint trust with separate named beneficiaries. If the trust is ever revoked, the property reverts back to how it was before the trust was created.

Joint trusts are also simpler to administer after both spouses have passed. On the other hand, they offer less asset protection if a court judgment is entered against one spouse.

This is just a broad overview. If you and your spouse are getting older and looking for the best way to manage your assets, it would be a good idea to speak with an estate-planning attorney with elder law expertise.

Oft-overlooked provisions essential for estate plans

Like many other seniors, you might feel confident in the estate plan you have in place. But you still should run it by an attorney to make sure it's not missing anything important. That's because there are a number of provisions that should go in a will or estate plan that frequently get left out, often to the detriment of heirs and beneficiaries.

For example, many people overlook family heirlooms and personal possessions, which can set the stage for ugly family fights later on. By being explicit about who should get what items, you can help avoid conflict. In some states this can be accomplished with a "personal property memorandum" that's referenced in the will and lays out all the details. This is often easier than putting all the details in the will itself, because you can more easily edit a personal property memorandum, and courts in many states will honor it as long as it's signed and dated.

Another important thing to account for is digital assets such as email accounts, financial accounts and social media accounts. If you want your family to be able to deal with your digital property according to your wishes, you should make a list of all such accounts as well as usernames and passwords, and include provisions in your estate documents enabling your personal representative or estate administrator to access them.

People also often neglect to provide for pets in their wills or estate plans. Pets generally cannot directly inherit property, but an owner can designate a caretaker and leave assets for a pet's care. Some states even allow for pet trusts, where you can appoint a trustee to make periodic payments to the designated caregiver to meet the pet's needs.

Finally, it's critical to name an alternate beneficiary to receive your property if the named beneficiary doesn't outlive you. Otherwise your property will pass to whomever is entitled to it under state "intestacy" laws (in other words, state laws that dictate who gets property when there's no will). Similarly, you should name a back-up executor for your estate in case the person you selected first is unable to serve in that role.

Beware Social Security's remarriage rule

If you're middle aged and thinking of getting remarried, be very careful about how you time your nuptials. That's because whether you get married before the day you turn 60 or after the day you turn 60 could impact your eligibility for survivor benefits from a prior marriage.

Under Social Security rules, if you get remarried before turning 60, you lose the right to receive survivor benefits from your previous marriage. However if you get married the day you turn 60 or any time thereafter, you are still eligible. This is true regardless of whether your earlier marriage ended in divorce or because of the death of your previous spouse.

The rules have additional quirks. For example, if you were to marry at age 59, you would be giving up any claim to survivor benefits based on your previous spouse's record. But if your new marriage ends in divorce or the death of your new spouse, you would

once again be eligible for survivor benefits stemming from your previous marriage. You might even be able to choose between benefits from your first marriage or your second marriage.

Interested in learning more? Call an elder law attorney with experience in tax and benefit planning.

Beware unscrupulous marketing of Medicare Advantage plans

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didn't include the hospital or doctors she saw in her rural area. In fact, some individuals have reported being switched from a traditional Medicare plan to a private Medicare Advantage plan — or from one private plan to another — without realizing it.

The Senate Finance Committee has been investigating these marketing practices, and Medicare itself has announced plans to police marketing materials and ads more carefully to ferret out potential fraud and abuse. But older Americans and their close relatives can't rely entirely on government agencies to keep them safe from these scams. If you or a family member is a Medicare Advantage or traditional Medicare recipient, it's a good idea to take the following steps:

- *Review your Medicare plan annually with an attorney*

Medicare open enrollment occurs each fall through early winter. This is when people can switch from original Medicare to Medicare Advantage or from Medicare Advantage to original Medicare or between Medicare Advantage plans. This is also when unscrupulous marketers intensify their targeting. Rather than risk falling prey, meet with an elder law attorney to discuss your existing coverage to determine whether it best meets your needs and to compare options to see what's in your best interest. An attorney can help you figure out whether Medicare Advantage is for you.

- *Keep your personal information private*

Never reveal your Social Security or credit card numbers or personal health and financial information to anyone who is not part of your health care team. During the weeks before open enrollment, you may be bombarded with pitches, including from people claiming to be a Medicare sales representative. But there is no such job — Medicare officials only correspond with people by phone or email, and only in response to inquiries. So do not share your information with anyone who claims to be from Medicare. It is likely to be a scam.

- *Report suspicious behavior*

In addition to hanging up on suspicious phone callers and ignoring the doorbell when it's someone you don't know, be sure to report anyone you think is targeting you for fraud. You can report suspicious activity by calling 1-800-MEDICARE. An elder law attorney can also help you determine if something is suspicious and help you file a report.

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Don't keep your will in your safety deposit box

It's very common for people to keep their will in a safety deposit box at the bank. After all, that's where they keep other valuable things, like jewelry, the title to their automobile, treasury bonds and deeds to their home.

However, a safety deposit box may not be the best place to keep your will. That's because shortly after your death, the probate process begins. This is how your assets are identified and secured, your will is authenticated, your debts are paid and your assets are distributed.

The person you appointed as your executor is charged with overseeing this process. But your executor can't start the process until he or she submits an original copy of your will to the court and is officially appointed as executor. However, the bank may not allow the executor to get into your safety deposit box to get the will without proof that he or she is actually the executor — and that proof appears in the will sitting in the box.

A safety deposit box may not be the best place to keep your will. That's because shortly after your death, the probate process begins.

So, where should you keep your will? Your best bet is to keep the original copy with your estate planning attorney while giving other copies to your executor. Another option might be to keep the original at home in a fireproof safe or give it to a close family member you can trust. That way the original is safe but accessible to those who need to gain access and your executor can start the probate process more quickly with less complications.