



OIG ALERT

For Immediate Release
April 8, 2003

Office of Inspector General
330 Independence Ave., SW
Washington, D. C. 20201
(202) 619-1343

OIG WARNS AGAINST MISUSE OF HHS WORDS, SYMBOLS, EMBLEMS

The Office of Inspector General (OIG) issues this alert as a reminder that it is a violation of federal law for individuals or organizations to misuse HHS departmental words, symbols, or emblems to market their services. This reminder is prompted by particularly egregious violations of this statute by U.S. Seminar Corporation of La Mesa, California.

An **OIG demand letter** was served April 3 on U.S. Seminar and its executives Jeffrey Ribera, Richard Price, and Darrell Braithwaite, seeking civil monetary penalties in the amount of \$1,086,258 for the misuse of the word “Medicare” in its marketing practices. The unlawful conduct alleged by the OIG is based on over 362,000 mailings issued by the company. U.S. Seminar offers Medicare reimbursement and coding seminars to health care providers and practitioners nationwide.

The OIG alleges that U.S. Seminar has sent hundreds of thousands of solicitations to health care providers in which it has used the words and letters of the Medicare program and HHS in a manner that reasonably could be construed as conveying the false impression that its seminars are approved, endorsed, or authorized by Medicare. Neither U.S. Seminar nor Doctor’s Assistance Corporation, formed in 2002 by U.S. Seminar’s owners to provide similar training on privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, are associated with or endorsed by Medicare or HHS.

Investigators from the OIG found that U.S. Seminar:

- employees contacted providers, misidentifying themselves as Medicare representatives;
- told providers that attendance at the company’s seminars is mandated by Medicare;
- engaged in this marketing conduct frequently for over six years, despite numerous notifications, in the form of cease and desist letters, from the OIG that these marketing efforts violated federal law; and
- solicitations have generated complaints from providers in nearly every state, with some complainants stating that they received several solicitations from U.S. Seminar each year.

The misuse of words, letters, symbols, or emblems of Medicare or HHS in an advertisement, solicitation, or other form of communication that reasonably could be construed as conveying the false or misleading impression of approval, endorsement, or authorization of the government is a violation of section 1140 of the Social Security Act, 42 U.S.C. § 1320b-10. Neither Medicare nor HHS has ever endorsed private companies or individuals. The OIG may impose a penalty of up to \$5,000 for each violation related to printed media and a penalty of up to \$25,000 in the case of such misuse related to a broadcast or telecast. In the case of direct mailing, solicitations, or advertisements, each piece of mail constitutes a separate violation.

The OIG takes action against those who violate this statute with such marketing practices. In those instances where a matter is not resolved informally after issuance of a cease and desist letter, the OIG may issue a demand letter. A demand letter initiates a formal administrative proceeding in which these recipients have a right to request a hearing before an HHS Administrative Law Judge. Since 1988, the OIG has issued over 30 cease and desist letters to various companies around the country based on potential misuse of HHS or Medicare words or symbols. The overwhelming majority of recipients of such letters comply with the letters' demands.

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Via Hand Delivery
and Certified Mail
Return Receipt Requested

U.S. Seminar Corporation
c/o Jeffrey Ribera
President
7260 University Avenue
La Mesa, California 91941

Richard Price
Vice-President
U.S. Seminar Corporation
7260 University Avenue
La Mesa, California 91941

Jeffrey Ribera
President
U.S. Seminar Corporation
7260 University Avenue
La Mesa, California 91941

Darrell Braithwaite
Operations/Sales Manager
U.S. Seminar Corporation
7260 University Avenue
La Mesa, California 91941

Dear Messrs. Ribera, Price, Braithwaite, and U.S. Seminar Corporation:

Pursuant to the authority delegated to me by the Secretary and the Inspector General of the United States Department of Health and Human Services, I propose against each of you, jointly and severally, in your individual and your official capacities, a civil monetary penalty in the amount of \$1,086,258. This action is authorized by section 1140 of the Social Security Act (Act), 42 U.S.C. § 1320b-10 and 42 C.F.R. § 1003.102(b)(7). This proposed civil monetary penalty is based upon my determination that you have mailed or caused to be mailed at least 362,086 solicitations that misused Medicare program words, symbols, emblems, or names in violation of section 1140 of the Act.

Section 1140 of the Act prohibits the use of the word "Medicare" and certain other words, symbols, and emblems associated with Medicare and the Department of Health and Human Services (HHS) in such a manner that the person using them knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that a solicitation or other item was approved, endorsed, or authorized by Medicare or HHS, or that such person has some connection with, or authorization from, HHS. Persons who violate this provision are subject to civil monetary penalties of up to \$5,000 for each violation. Section 1140(b)(1) of the Act, 42 U.S.C. § 1320b-10(b)(1); see also 42 C.F.R. § 1003.103(d)(1). In the case of direct

mailing solicitations or advertisements, each piece of mail constitutes a separate violation. Id.

Based on our investigation, I have determined that you have mailed, or caused to be mailed, at least 362,086 solicitations from U.S. Seminar Corporation (U.S. Seminar) to persons, including health care providers (Providers), in four separate mailings, one in February 2001, one in December 2001, one in July 2002, and one in August 2002.

In many instances, you sent a series of three solicitations to Providers. The first of these mailings is a Blue Brochure, describing that the solicitation is “FORMAL NOTICE of [a] WORKSHOP DETAILING LOCAL [STATE] MEDICARE CHANGES.” The solicitation refers to a “Medicare Special Bulletin B-89-23” and states that “Compliance [is] Required.”

Within a short period of time, you also send a second mailing to the same Providers. The second mailing consists of a Yellow Card. On the Yellow Card, the Provider is again warned that “Major Medicare reforms are now official” and that the solicitation is a “Formal Notice” of information about the Provider’s “Local [state] Medicare Changes.” The solicitation also contains a large box stating that “Major Medicare reforms are now official . . . [and] code combinations must be known and used to avoid sanctions.”

Our investigation has revealed that after you send a Blue Brochure and a Yellow Card to Providers, you also send a Pink Postcard. This third solicitation states that:

[t]his notification serves as your **Final Notice** of new local Medicare code **changes**. Compliance with new changes [is] now **legally required**. Your instruction session has been scheduled. Contact registrar within 24 hours to confirm inclusion into Medicare Changes instruction sessions, or request removal from update list.

(emphasis in original).

All of these solicitations could reasonably be construed to mean that your seminars are approved, endorsed, or authorized by Medicare. For example, these solicitations use the term “Medicare” in combination with the official terminology of “FORMAL NOTICE” in bold type, in addition to “Compliance Required” and “legally required.” These and other misleading statements in your solicitations gave Providers the false impression that the solicitations were approved, endorsed, or authorized by Medicare or HHS, or that they were in some way connected with Medicare or HHS.

In determining the amount of the civil monetary penalty to impose against you, I have considered the following circumstances as specified in 42 C.F.R. § 1003.106(a)(3)(i):

1. The nature and objective of the solicitations

First, I have considered the nature and objective of the solicitations, and the degree to which they have the capacity to deceive members of the public. The nature of the solicitations is highly misleading. The solicitations are clearly designed to induce Providers to pay to attend U.S. Seminar's programs based on a false impression that such programs were required by or were affiliated with Medicare or HHS. In particular, by announcing a "Formal Notice" of Medicare program requirements, you have created the false impression that you are government representatives or that you have been authorized to speak for the government. The use of the word "Medicare" with the words "Formal Notice" and "Mandatory" in bold have the capacity to give Providers the false impression that the solicitations are approved, endorsed, or authorized by Medicare or HHS. Providers nationwide who have received these solicitations have stated that they believed U.S. Seminar and its solicitations are affiliated with, approved, endorsed, or authorized by Medicare or HHS.

2. Your degree of culpability

Ribera and Price are the sole owners and directors of U.S. Seminar. Further, as a shareholder, Price nominated Ribera to be his proxy, thereby effectively making Ribera the sole shareholder, Director, Chairman of the Board, and President of U.S. Seminar. Price signed corporate documents certifying that he had read board meeting minutes that discussed the OIG investigation of this matter in 1999.

Braithwaite is U.S. Seminar's Operations/Sales Manager. Braithwaite provided instruction to U.S. Seminar employees on the policies and procedures of U.S. Seminar.

On July 29, 1997, Special Agent Gerald Roy met with Ribera and Braithwaite at U.S. Seminar's business address in La Mesa, California. SA Roy advised Ribera and Braithwaite that U.S. Seminar's claims regarding the mandatory nature of the seminars and their affiliation with Medicare were unlawful. Following this meeting with SA Roy, you continued to send solicitations to Providers that caused Providers to complain to the Health Care Financing Administration (now known as the Centers for Medicare and Medicaid Services) regarding the misleading nature of the solicitations. In addition, you received letters from the OIG requesting U.S. Seminar to cease and desist from sending these solicitations.

Additionally, based on information obtained during our investigation, we determined that your telephone representatives contact Providers and state that they are Medicare representatives. Your representatives state to Providers that attendance at your seminars is mandated by Medicare. Your representatives also state that if Providers fail to attend U.S. Seminar programs, they will be excluded from Medicare.

In addition to your failure to cooperate with our repeated requests to correct these violations, in October 2002, you formed a new corporation called Doctor's Assistance Corporation (DAC), a separate corporation that provides seminars to Providers nationwide about the privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which are enforced by the Office for Civil Rights (OCR), a component of HHS. DAC employees have also made misrepresentations by telephone that the seminars are accredited by OCR. Additionally, DAC employees have threatened Providers that, in order to be fully "HIPAA compliant," they must attend the DAC seminars.

Based on the above, I find that Ribera, Price, Braithwaite, and U.S. Seminar have a high degree of culpability.

3. Frequency and scope of the violation

I have also considered the frequency and scope of the violations, including whether a specific segment of the population was targeted. You have engaged in the above conduct with regard to thousands of solicitations, representing a significant portion of your marketing efforts. This conduct has been frequent and has occurred over the course of six years. Medicare carriers received complaints from Providers in nearly every state in the country with respect to your conduct. Some complainants stated that they received several solicitations from U.S. Seminar each year. Moreover, these solicitations target a specific population of Providers who are seeking compliance with Medicare regulations. The solicitations prey on these Providers who are attempting to comply with federal law.

4. Failure to cooperate with informal requests to correct violations

You were afforded numerous opportunities by this office to voluntarily bring your solicitations into compliance with the Act. On July 29, 1997, Special Agent Gerald Roy met with Ribera and Braithwaite, U.S. Seminar's President and Operations/Sales Manager, respectively. SA Roy advised Ribera and Braithwaite that U.S. Seminar's claims regarding the mandatory nature of the seminars and their affiliation with Medicare were unlawful. Despite this notice, you continued to issue the misleading solicitations.

On February 10, 1998, this office mailed a letter to you explaining that your solicitations were in violation of section 1140 of the Act. The letter referred to the "Misuse of the Term Medicare" and stated that you could be liable for civil monetary penalties of up to \$5,000 per violation of section 1140 of the Act. The letter explained that you could be liable for the improper use of the word "Medicare" in U.S. Seminar's written materials and referenced complaints from individual Providers who were contacted by telephone and believed that U.S. Seminar's programs were required by the government. At that time, we requested that you immediately cease and desist from mailing all such misleading solicitations. You made representations that you would make material changes to your solicitations. However, the OIG continued to receive complaints from Providers regarding the misleading nature of your solicitations.

Consequently, on May 24, 2000, we notified you that based on both the number of complaints we continued to receive, as well as insufficient revisions to your solicitations on your part, this office would have no choice but to proceed administratively. Any alterations that U.S. Seminar may have made to its solicitations did not materially change their misleading nature. Such ineffective alterations further demonstrate a lack of willingness to comply with the Act. Our May 24, 2000, letter referenced many types of complaints from Providers, including U.S. Seminar's use of a 1-800 "Medicare Information line" on its solicitations, and statements by U.S. Seminar employees to Providers that they could lose their Medicare "PIN" if they did not attend U.S. Seminar programs. Even though U.S. Seminar may have ceased using the 1-800 "Medicare Information line," U.S. Seminar employees have continued to make threatening telephone calls to Providers regarding Medicare requirements and U.S. Seminar programs. Further, the combination of these telephone calls with the solicitations causes Providers to believe that U.S. Seminar either is or could be associated with Medicare.

Penalty Determination

After considering the circumstances enumerated above, I have determined that a civil monetary penalty in the amount of \$1,086,258, or \$3.00 per misleading solicitation, would be appropriate. This penalty amount reflects our determination that you have mailed at least 362,086 misleading solicitations, *each* of which subject you to a \$5,000 penalty pursuant to the Act. 42 C.F.R. § 1003.103(d)(2). This action only addresses penalties for four multiple-solicitation mailings from U.S. Seminar, one in February 2001, one in December 2001, one in July 2002, and one in August 2002.

If you choose not to contest this proposed civil monetary penalty, you should submit a written statement accepting its imposition within 60 days of receipt of this notice, and

forward a cashier's or certified check in the amount of \$1,086,258, made payable to the Secretary, United States Department of Health and Human Services.

The Appeal Rights Available to You

The penalties described in this letter will automatically go into effect 65 days from the date of this letter unless an appeal is filed within 60 days of your receipt of this letter. In accordance with 42 C.F.R. § 1005.2(c), your receipt of this letter is presumed to occur 5 days after the date of this letter. To appeal this decision, you must file a written request for a hearing under the procedures set forth at 42 C.F.R. Part 1005. Such a request for a hearing must include a copy of this notice as well as: 1) the specific issues or statements in this notice with which you disagree; and 2) the basis for that disagreement. See 42 C.F.R. § 1005.2(d). If you wish to appeal this decision, you must submit such a request within 60 days of your receipt of this letter to the Civil Remedies Division, Departmental Appeals Board, Room 637D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Due to mail delivery delays created by the irradiation process now in place for all federal mail in Washington, D.C., we recommend that you also send via facsimile a copy of any appeal request to the Departmental Appeals Board at (202) 205-0278.

If you have any questions, or wish to discuss this matter further, please contact Caryn B. Gordon, Senior Counsel, at (202) 205-9504.

Sincerely yours,

/Larry J. Goldberg/

Larry J. Goldberg
Assistant Inspector General for Legal Affairs