

# HAFA & Dicerros Law

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Improper Marketing in Health Insurance

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# **This is the root cause that has contributed to the emergence of fraudulent activities**

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CMS enabled Enhanced Direct Enrollment (EDE) platforms to operate with minimal information requirements—name, date of birth, and state—creating a vulnerability that could potentially be addressed to mitigate fraud but remains unresolved

# How did we get CMS's Attention?

## **KFF** Health News

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By [Julie Appleby](#)

“It’s rampant. It’s horrible,” said Ronnell Nolan, president of [Health Agents for America](#), a nonprofit trade association representing independent insurance brokers.

This could have been stopped with a 2-factor authentication process that many businesses in the World use! But CMS decided otherwise...

## The recommendation to implement two-factor authentication was not adopted, leading to the current challenges we face today

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- CMS is utilizing algorithms that contain inherent flaws, disproportionately impacting minority agents and the communities they serve.
- Agents are being targeted by CMS, deemed guilty without being afforded the opportunity to prove their innocence. They face actions taken without due process or a formal appeal procedure, resulting in the immediate loss of their ability to sell, access their client base, and maintain their income—all without substantiated proof of fraudulent activity
- CMS is targeting reputable agents to increase the count of those whose certifications have been revoked. However, these are honest, compliant agents—not fraudulent ones—and the reported figures are inaccurate.

# Exposing the Truth, No Filters

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*"Just wanted to let you know I received my "Three Year Termination Notice". Very disheartening. Thank you for all you are doing to help us.*

*My wife doesn't work. She takes care of her aging parents. So, I am the sole breadwinner. I don't even know how to break this news to her. I am crushed."*

# HAFAs Strategic Initiatives and Actions

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- HAFAs was the first to develop a Fraud Reporting Tool designed to support State Fraud Departments and CMS in targeting unethical agents. While State Fraud Departments were highly responsive, CMS indicated that the evidence provided was insufficient for further action.
- In response to identifying fraudulent agents, CMS implemented a rule requiring consent forms, mandated three-way calls involving the Marketplace and the consumer, and subjected consumers and agents to lengthy processes that disrupt their daily responsibilities. This approach has led to undue scrutiny and punitive actions against reputable agents without sufficient cause

# HAFAs Strategic Initiatives and Actions (Continued)

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- With meetings being canceled by CMS, agents facing the loss of their entire agencies, staff, and livelihoods, HAFAs recognized the need to take further action. In response, we engaged Diceris Law to intensify our advocacy efforts.
- HAFAs regularly meets with Congressional leaders, including Senate HELP Committee staff most recently, to advocate for change. We are fighting to either prompt CMS to reform its disruptive processes or to seek intervention from Capitol Hill leaders. The agent community remains under significant pressure, and we are committed to defending their interests

We can no longer stand by—it's time to seek  
YOUR support

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# EDEs Lack Robust Access Controls

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- CMS appears to have chosen “ease of use” over “secure data” in its certification of EDEs
  - Access controls are lacking
  - Data is easily accessed leading to insurance fraud
  - Accessed data can also lead to other forms of fraud
- Biden/Harris Administration tout that enrollment in ACA coverage has doubled since taking office, but do not mention that fraud on the Exchange is rampant

# CMS's Response to Fraud is Stunning

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- CMS appears to have chosen a path towards scapegoating agents as opposed to fixing the root cause of the problem – poor access control and weak security on the EDE platforms.
- CMS's "audit" program is rife with legal issues:
  - Failure to follow regulations that outline the suspension/termination process
  - Failure to build the case that an agent has engaged in "actual" fraud or abuse, which is a condition precedent to terminating an agent's FEE agreements
  - Failure to provide agents the ability to defend themselves by withholding information, levying broad and ambiguous accusations, and dismissing documented evidence in favor of oral representations allegedly made by consumers to CMS
- CMS's posture appears antagonistic towards agents and does not appear to be aimed at truly solving the fraud issue

# Downstream Impact of CMS's Actions

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- Good agents are losing their books of business and the ability to provide for themselves and their families
- Good agents are losing their state licenses to sell health insurance as states suspend and terminate licenses based on CMS's actions
  - Note: States should beware of blindly following CMS in this regard
  - Note: CMS is facing multiple lawsuits, and a class/mass action is in the works
  - Note: States risk being brought into these actions or being separately sued
- Good agents are losing their business insurance coverages (*e.g.*, E&O)