



August 10, 2022

The Honorable Chiquita Brooks-LaSure, Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue SW  
Washington DC 20201

RE: CMS-4192-P

Dear Administrator Brooks-LaSure:

The Agent Alliance, representing America's premier agent and broker trade associations whose members serve consumers and businesses with a canopy of insurance options, is writing in response to the "Medicare Program: Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs," finalized in May of this year.

The final rule made significant changes to existing marketing requirements for both Medicare Advantage and Part D plan-marketing requirements. We understand the importance of protecting Medicare beneficiaries from unscrupulous third-party marketing organizations (TPMOs), especially call centers that use deceptive tactics and offer inaccurate information about Medicare products and coverage.

We represent licensed and certified independent agents and brokers who work directly with Medicare beneficiaries to battle these misinformation campaigns daily and work tirelessly to make sure that beneficiaries do not make choices based on misleading and inaccurate information. Instead, it is always the goal of licensed and professional health insurance producers who work in the Medicare field to ensure that their clients purchase coverage that best meets their personal needs and financial situation.

The final rule seeks to account for unscrupulous marketing behaviors by requiring TPMOs to record all enrollment conversations. However, TPMOs already have this requirement in place. What is different in the proposed and now final rule is how TPMOs are being defined. The new definition of TPMO is overly broad and will needlessly impact many entities that are acting

responsibly, including individual agents and brokers who will now be subject to the recording requirements.

This new requirement will add an additional burden to licensed and certified agents attempting to assist Medicare beneficiaries when choosing a suitable health and drug plan. The new regulations will discourage many licensed and certified agents and brokers from representing Medicare Advantage and Prescription Drug Plans, leaving millions of Medicare beneficiaries without access to professional assistance in their enrollment. Independent agents and brokers are often small businesses without the financial resources to implement the recording requirements included in the final rule. The cost of setting up a HIPAA-compliant audio recording system with adequate and protected storage capabilities far exceeds the abilities of many of these licensed and certified agents, who are now facing a decision as to whether to participate in this fall's AEP.

The Alliance is also concerned with the lack of guidance that has been provided to independent agents and brokers as to how to be in compliance with these new rules. The final rule was released in May, less than five months prior to the AEP. Further, agents and brokers were not included in stakeholder discussions on the development of the rule so that it would reflect the business practices of independent agents and brokers and the relationships with their client beneficiaries.

As it stands, it is nearly impossible for our members to be in compliance with the final rule prior to the AEP, which will leave thousands of Medicare beneficiaries without the help of licensed agents and brokers and may leave them in the hands of the bad actors that this rule seeks to regulate. The Alliance requests a delay of six to 12 months, during which CMS will work with stakeholders to develop marketing regulations that will protect beneficiaries while allowing them access to their trusted licensed independent agent or broker.

If you have any questions about our comments or need more information, please contact Janet Trautwein, executive vice president and CEO of the National Association of Health Underwriters, at (202) 595-0787 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Regards,  
National Association of Health Underwriters  
Independent Insurance Agents & Brokers of America  
National Association of Insurance and Financial Advisors  
National Association of Professional Insurance Agents  
The Council of Insurance Agents and Brokers