



July 26, 2022

The Honorable Chiquita Brooks-LaSure, Administrator  
Dr. Meena Seshamani, M.D., Ph.D., Deputy Administrator and Director of Center for Medicare  
Cheri Rice, Deputy Director, Parts C and D, of the Center for Medicare  
Liz Richter, Deputy Center Director of the Center for Medicare  
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, Dr. Seshamani, Deputy Director Rice and Deputy Director Richter:

I am writing on behalf of the National Association of Insurance and Financial Advisors (NAIFA). NAIFA is the preeminent membership association for the multigenerational community of financial professionals in the United States. NAIFA has 53 state and territorial chapters and 35 large metropolitan local chapters. NAIFA members are in every congressional district and advocate on behalf of producers and consumers at the state, interstate, and federal levels. We would like to share comments on 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 and request further guidance on specific areas to ensure compliance with the rules while protecting Medicare beneficiaries.

NAIFA members often engage in helping clients purchase, administer and utilize health insurance coverage, including Medicare-eligible individuals purchasing private-market-coverage options. After the release of the final rule many of our members shared concerns that the new rule puts many Medicare beneficiaries in danger from not being able to receive advice from licensed, certified insurance professionals during this year’s annual enrollment period.

The final rule made significant changes to existing marketing requirements for both Medicare Advantage and Part D plan marketing requirements. NAIFA understands and supports the concept 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. Our members who work directly with Medicare beneficiaries 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 both their personal needs and financial situation.

NAIFA members expressed concern that the new rule requires TPMO’s to record all enrollment conversations. Although TPMOs already require this recording during enrollment conversations, the new



rule is overall broad in its definition of TPMOs. This modified definition needlessly impacts many entities working in good faith, including individual agents and brokers who will now be subject to the recording requirements. This new requirement adds an additional burden to licensed and certified agents attempting to assist Medicare beneficiaries when choosing a suitable health and drug plan.

These new regulations will force many licensed and certified agents and brokers out of the market, 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. There are an estimated 100,000+ licensed and certified independent agents and brokers who certify each year to offer Medicare Part C and D plans. Without these licensed and certified agents assisting in enrollments, Medicare beneficiaries will have few choices in finding accurate enrollment assistance.

On balance, beneficiary dissatisfaction is not with their agent of record, but the call centers that solicit beneficiaries to switch plans that may not meet their needs. NAIFA believes that independent insurance agents and brokers should be carved out of the TPMO definition but believes that at minimum, calls with existing clients should be exempt from this requirement. Allowing exiting agent/client relationships to continue unhindered by these new regulations would remove much of the burden the implementation of this new rule create for agents to continue serving their existing client database.

NAIFA would also be in favor of a delay in the rule's implementation in order for CMS to hold further conversations with stakeholders to determine a solution that would satisfy the protection of consumers while also ensuring these clients to not lose the assistance they rely on to meet their health insurance demands.

NAIFA would also be interested in knowing if CMS will be providing any tools for independent agents and brokers to comply with the rule. NAIFA members are concerned that CMS has provided little outreach or guidance to agents and brokers in the scope of having to comply with a brand-new regulation of this magnitude.

Thank you for the opportunity for us to share our concerns with the final rule and to request further guidance and action by CMS. If you have any questions or need more information, please do not hesitate to contact Michael Hedge, NAIFA's Director of Government Relations at [mhedge@naifa.org](mailto:mhedge@naifa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Holzberg". The signature is fluid and cursive.

Larry Holzberg, LACP, LUTFC  
President  
National Association of Insurance and Financial Advisors