



March 07, 2022

The Honorable Chiquita Brooks-LaSure
Administrator Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4192-P
PO Box 8013
Baltimore, MD 21244-8013

Submitted: Via Regulations.gov

RE: Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192-P)

Dear Administrator Brooks-LaSure:

The following comments on **CY 2023 Medicare Advantage and Part D Proposed Rule (CMS-4192-P)**, as published in the Federal Register on January 12, 2022, are submitted on behalf of the members of the National Association of Insurance and Financial Advisors (NAIFA), which represents over 20,000 insurance agents and financial professionals in all 50 states and the District of Columbia. The following comments address the portion of the proposed rule that focuses on the sales and marketing practices of Third-Party Marketing Organizations (TPMOs) of Medicare Advantage (MA) and Medicare Part D (Part D) plans.

CMS reports that it has seen an increase in beneficiary complaints concerned with the marketing practices of TPMOs who sell MA and Part D plans. Many NAIFA members faithfully serve their clients in the Medicare Advantage and Part D marketplace and have reported similar complaints to NAIFA. Often this complaint stems from an existing client who has seen a television or print ad promising too-good-to-be-true coverages and was enrolled in an inappropriate plan after responding to the advertisement.

These advertisements are highly misleading and are often described as fraudulent. Many TPMOs are named to position themselves as an official-sounding organization and include program terms such as Medicare and Medicare Advantage in their names to create the perception of official government endorsement. While many marketing practices are prohibited under the 42 CFR parts 422 and 423, subpart V, some TPMOs take advantage of gaps in requirements, while other



TPMOs blatantly violate them. Additionally, unsuspecting seniors attempting to navigate the complexities of Medicare coverage are funneled into high-pressure sales situations where they are switched into new plans without regard to coverage or financial needs.

NAIFA believes that the proposed rule provides an excellent foundation to build on and supports the three proposed updates to the communication and marketing requirements. Further, we ask that you consider the following:

Carefully Define Third Party Marketing Organization (TPMO)

NAIFA members spend significant time building a holistic understanding of their clients' needs and financial goals. In addition, they often serve their local communities and build their practices on a foundation of trust. We strongly believe that the inappropriate marketing and sales actions by unscrupulous TMPOs undermine the MA and Part D marketplace and threaten a negative public perception that casts a shadow on the excellent work done by many insurance agents and financial advisors. As CMS drafts the proposed definitions, we ask that they be mindful that not all sales agents operate in this fashion and that imposing overly broad definitions could limit the good actors' ability to serve their clients.

Update Disclaimer, Disclosure, and Care Requirements

NAIFA members have made several suggestions concerning new disclaimer, disclosure, and care requirements. These suggestions are born from their extensive experience in educating consumers on MA and Part D coverage and their experience assisting frustrated consumers to undo the damage done by the placement of improper coverage through unscrupulous TMPOs.

- **Make marketing disclosures more visible to the consumer** - This could include updated labeling requirements for font size, placement, color, time on screen, and voice overlay. In addition, labeling requirements should strongly consider that the targeted audience is seniors who would benefit from enhanced audio and visual disclosures.
- **Stronger Disclosure Language** - Disclosure language should be stronger, and CMS should consider drafting more prescriptive disclosure guidelines or language requirements to ensure that unscrupulous TMPOs cannot obfuscate consumer protections with misleading or confusing language.
- **Require consideration of current primary medical provider network eligibility marketing and plan selection** - Seniors, especially those with preexisting medical conditions undergoing treatment, can lose access to medical providers when enrolled in a new plan. Therefore, consideration of provider access that accounts for factors including geographic location, current treatment plans, and current medical providers should be required.



- **Require consideration of current prescription drugs in marketing and plan selection -** There are significant variations in coverage and eligibility between Part D and prescription drug plans. Therefore, considering a prospect's current prescriptions into marketing and choosing a plan is essential to ensuring seniors can adequately budget and afford their medications.
- **Expand Disclosures Availability for Non-English Speakers –** We support the creation of a multilanguage insert that would inform readers that interpreter services are available for free but feel that, given that such a sizable portion of the complaints are from those who do not speak English at home, that this effort may not go far enough. Additional options to receive information in a language other than English should be expanded.

Stronger Requirements on Disclosures for Coverage and Consumer Protection on Replacement Coverages

NAIFA believes that the TPMO marketing and sales practices often result in inappropriate plan replacements. Replacement suitability and disclosure are something that, like insurance agents and financial advisors, NAIFA members are very familiar with, as these practices are heavily regulated in other product lines such as life insurance. Therefore, we ask that CMS consider the following:

- **Require producers to identify existing coverage** before taking an application from someone already covered to ensure the accuracy of MA plan advertisements and protect the consumer's best interests.
- **Require a separate signed disclosure** in the case of coverage replacement that includes prominent disclosure and provides for new maximum out-of-pocket costs.
- **Require notification** of the agent of record of replaced coverage plan. This will allow consumers inappropriately placed into plans to take better advantage of the free-look period provided for under open enrollment.

Restrict Misleading Advertising Statements

Coverage provided by Medicare Advantage/Medicare Supplemental and Part D plans should be based on individual needs and can significantly impact the financial security of seniors. Unfortunately, claims about costs and premiums often hide the potential financial impact of switching from a Medicare Supplement to Medicare Advantage plans.

- **Restrict TPMO Advertisements of Dual Eligible Special Needs Plans and Benefits (D-SNP) and Chronic Special Needs Plans(C-SMP) –** Specialized coverages and benefit options offered under these plans are often used to lure in prospects. However, these



coverages are only available to specifically qualified individuals and not the typical Medicare consumer. Therefore, advertising of these plans by TPMOs (especially through indiscriminate mass media channels) that alludes to or implies broad eligibility is highly misleading and should be significantly restricted or prohibited.

- **Prohibit Prices and Costs Claims** - While current marketing practices prohibit using the term "free" in many cases, unscrupulous TPMOs frequently use "zero cost" language. Therefore, claims about premiums or costs should be significantly restricted or prohibited. Many seniors, particularly those on a fixed budget or limited financial means, must budget carefully. When switched from plans with regular monthly premiums and low/no co-pays and low maximum out-of-pocket costs to plans with high out-of-pocket costs, the likelihood of catastrophic medical expenses significantly increases.
- **Restrict TPMOs from transferring prospects to producers that do not offer advertised products** - Many TPMOs indiscriminately transfer prospective consumers to producers without regard for lead source, advertised offering, or eligibility. If consumers respond to an advertisement, they expect to be connected to a producer who offers that plan.

NAIFA would like to reiterate its support of CMS and the efforts to address our shared concern around MA and Part D marketing practices by certain TPMOs. We will continue reviewing proposed rules and commenting on their potential impacts on insurance agents, financial professionals, and consumers. We are available to discuss these issues and offer our assistance as this proposed rule is finalized. Please do not hesitate to contact NAIFA's Policy Director, Maeghan Gale (mgale@naifa.org), if you require further information or answers to any questions.

Sincerely,



Lawrence Holzberg
NAIFA President

