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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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October 25, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Brooks-LaSure:

Sunday, October 15th marked the beginning of the 2024 Medicare Annual Enrollment Period. During this six-week period, more than 60 million Americans have the opportunity to enroll or change their Medicare Advantage or stand-alone Part D plan for the next year. For many, this period is also the start of a marketing barrage as marketing middlemen look to collect seniors' information in order to bombard them with direct mail, emails, and phone calls to get them to enroll in a different plan.

The Senate Finance Committee's November 2022 investigation of deceptive marketing practices in the Medicare Advantage program found that complaints across the country have been increasing as seniors have been subject to increasingly more aggressive marketers.¹ The marketing onslaught can create confusion among beneficiaries resulting in beneficiaries feeling overwhelmed and choosing not to make a decision, even if a change might be beneficial, or enrolling in a new plan only to find out that the marketing was misleading. We applaud the changes the Centers for Medicare & Medicaid Services (CMS) made to enforce existing rules prohibiting deceptive marketing practices in the Medicare Advantage program, and provide clearer guidance to plans around marketing.² We urge CMS to continue to maintain robust enforcement of these commonsense requirements.

However, one of the most odious marketing practices – the selling of seniors' information multiple times to different marketing middlemen and brokers – was not addressed in the 2024 final rule. At the Senate Committee on Finance's October 18th hearing, "Medicare Advantage Annual Enrollment: Cracking Down on Deceptive Practices and Improving Senior Experiences," we heard testimony that marketers were already calling seniors multiple times a day.³ We strongly urge CMS to adopt the proposal from the

¹ U.S. Senate Committee on Finance, *Deceptive Marketing Practices Flourish in the Medicare Advantage Program: A Report by the Majority Staff of the US Senate Committee on Finance*, November 2022. Retrieved from: <https://www.finance.senate.gov/imo/media/doc/Deceptive%20Marketing%20Practices%20Flourish%20in%20Medicare%20Advantage.pdf>

² King, R, "CMS rejects more than 300 Medicare Advantage ads" *Politico*, October 17, 2023. Retrieved from: <https://subscriber.politicopro.com/article/2023/10/cms-rejects-more-than-300-medicare-advantage-ads-00122031>.

³ Hogle K, Prepared Testimony for "Medicare Advantage Annual Enrollment: Cracking Down on Deceptive Practices and Improving Senior Experiences", Senate Committee on Finance, October 18, 2023. Retrieved from:

CY2024 rule that would limit third party marketing organizations from selling their seniors' information to other third party marketing organizations to put an end to this annual harassment.⁴

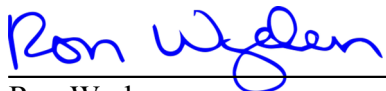
Furthermore, we urge CMS to leverage every opportunity to identify bad actors who are taking advantage of Medicare beneficiaries. For example, Medicare Advantage plans should be required to provide the broker's identifier when a beneficiary submits an enrollment related complaint through the CMS complaint tracking system. Aggregated broker-level information about complaints regarding fraud or deceptive practices should then be made available to plans to inform their contracting arrangements and state insurance commissioners for any appropriate enforcement actions.

Lastly, we urge CMS to require greater transparency around marketing spending in the Medicare Advantage program and to review the agent and broker compensation model to ensure a level playing field for plan participants in the MA program. While CMS regulates broker commissions and referral fees, CMS does not systematically collect other allowed fees including health risk assessment fees, marketing fees, and other post-enrollment fees, or even collect total spending on broker commissions and marketing fees. The Secretary is required by statute to ensure that the compensation guidelines for agents and brokers, "shall ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage plan that is intended to best meet their health care needs."⁵

Health care coverage decisions are both personal and consequential. Finding the plan that best meets one's health needs is important for both access to benefits and out of pocket spending. We urge you to continue to closely monitor the enrollment process, improve transparency around marketing fees, strengthen the program's efforts to root out unethical practices and bad actors, and enforce current program requirements.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Debbie Stabenow
United States Senator

https://www.finance.senate.gov/imo/media/doc/10182023_hoglund.pdf.

⁴ Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, Medicare Parts A, B, C, and D Overpayment Provisions of the Affordable Care Act and Programs of All-Inclusive Care for the Elderly; Health Information Technology Standards and Implementation Specification, 87 FR 79452, December 27, 2022, *see* 79741 "Personal beneficiary data collected by a TPMO may not be distributed to other TPMOs." Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2022-12-27/pdf/2022-26956.pdf>.

⁵ SSA Sec 1851(j)(2)(D).



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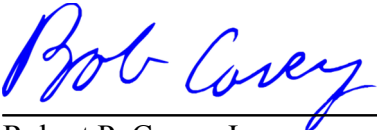
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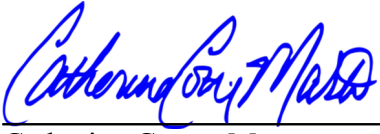
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