

Congress of the United States
Washington, DC 20515

October 31, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue SW
Washington, DC 20024

Dear Administrator Brooks-LaSure:

We are writing today to urge increased oversight and transparency of broker participation and compensation in the Medicare Advantage market in the upcoming Contract Year 2025 Part C and D Policy and Technical Changes proposed rule. We appreciate the previous actions taken by the Centers for Medicare & Medicaid Services (CMS) to prioritize the health and well-being of our nation's seniors by ensuring that beneficiaries have access to accurate and unbiased information about Medicare coverage. These policies protect the integrity of the Medicare program and ensure that seniors are able to access affordable health coverage. We urge CMS to build on this progress by taking action to increase transparency and accountability of broker compensation in the growing Medicare Advantage market.

For the first time in the history of the Medicare program, more beneficiaries are now enrolled in a Medicare Advantage plan than traditional Medicare.¹ However, despite growing popularity, the process for enrolling in a Medicare Advantage plan has become increasingly convoluted. The average Medicare beneficiary had 43 distinct Medicare Advantage plan options to choose from in 2023², leading many seniors to seek assistance from family members, State Health Insurance Assistance Programs (SHIPs), or licensed brokers to better understand their options.³ While SHIP counselors are publicly funded to provide free, unbiased assistance to beneficiaries, brokers receive commissions directly from private insurers to reach and enroll beneficiaries in Medicare Advantage plans.

Brokers can play an important role in helping beneficiaries choose the right Medicare coverage. However, we are concerned that financial incentives influence which plans brokers highlight without necessarily taking into account seniors' health needs and budget. Misleading

¹ Nancy Ochieng et al. *Medicare Advantage in 2023: Enrollment Update and Key Trends*. Kaiser Family Foundation. (Aug. 9, 2023).

² Jeannie Fuglesten Biniek et al. *How Health Insurers and Brokers are Marketing Medicare*. Kaiser Family Foundation. (Sep. 15, 2023).

³ Freed, Meredith et al. *Medicare Advantage 2023 Spotlight: First Look*. Kaiser Family Foundation. (Nov. 10, 2022).

and deceptive marketing practices are also prevalent in the Medicare Advantage program.⁴ While CMS has taken important steps to increase transparency of broker compensation and address deceptive marketing⁵, we believe more needs to be done to protect beneficiaries and ensure seniors have access to accurate information about their health coverage options.

Since 2009, CMS has set annual limits on per-enrollee Medicare broker commissions. For plan year 2024, the fees are capped at \$611 nationally for initial enrollment and \$306 (50 percent of fair market value) for renewals.⁶ However, these caps are not comprehensive as they fail to include add-on payments that can significantly increase a broker's earnings. Medicare Advantage plans can circumvent CMS commission caps by paying brokers for marketing, recruitment, customer service, and other related services. This total broker compensation can amount to \$1,300 or more, resulting in billions of dollars each year. Allowing Medicare Advantage plans to offer unreported bonus payments to their brokers can create misaligned incentives. We are concerned that these add-on payments are steering seniors into Medicare Advantage plans with the highest broker payment structure at the expense of plans that may be best suited for seniors' health needs.

We appreciate the efforts undertaken by CMS to address deceptive marketing and limit broker compensation. We urge the agency to take further action to protect the integrity of the Medicare program and its beneficiaries by regulating brokers' total compensation in the upcoming Contract Year 2025 Part C and D Policy and Technical Changes proposed rule. In particular, we urge CMS to require Medicare Advantage plans to report total broker compensation amounts, inclusive of any bonus administrative or incentive payments made to brokers. Prior to 2018, Medicare Advantage organizations and Part D sponsors were required to provide the amount spent on direct sales, salaries, and benefits, as well as agents and brokers fees and commissions in the annual Medical Loss Ratio (MLR) data collection. This information, along with the other MLR reporting requirements, increased transparency and allowed oversight of spending by Medicare Advantage organizations and Part D sponsors.⁷ However, changes detailed in the "Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit

⁴ Gretchen Jacobson et al. *The Private Plan Pitch: Seniors' Experiences with Medicare Marketing and Advertising*. The Commonwealth Fund. (Sep. 12, 2023); Jeannie Fuglesten Biniek et al. *How Health Insurers and Brokers are Marketing Medicare*. Kaiser Family Foundation. (Sep. 15, 2023).

⁵ Centers for Medicare & Medicaid Services, *Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency*, 87 Fed. Reg. 27704, 27704-27902 (May 9, 2022) (Final Rule); See also, Kathryn A. Coleman, Health Plan Management System (HPMS) Memorandum: *CMS Monitoring Activities and Best Practices during the Annual Election Period*, CMS, (Oct. 19, 2022); See also, *2024 Medicare Advantage and Part D Final Rule* (CMS-4201-F) (Apr. 5, 2023).

⁶ Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly*. See: *Agent Broker Compensation*.

⁷ Centers for Medicare & Medicaid Services, *Medical Loss Ratio Data and System Resources* (Sep. 6, 2023).

Programs, and the PACE Program”⁸ significantly reduced the reporting requirements to four fields: organization name, contract number, adjusted MLR, and remittance amount. The changes enacted in the reporting of the MLR data allow the critical information of spending on brokers’ compensation and advertising costs to be left unreported and unnoticed.

In addition to reporting requirements for Medicare Advantage organizations and Part D sponsors, we urge the agency to reform total broker payments by including standardized limits on compensation. By ensuring broker payments are set at reasonable amounts, we remove incentives that encourage enrollment in plans with the highest broker payment that may not be best suited for seniors’ health needs. Further, such limits may encourage seniors towards trusted sources of information such as Medicare Advantage PlanFinder and SHIPs.

Our nation’s seniors deserve access to unbiased and accurate information about coverage options that best serve their individual needs. We urge the agency to use its broad authority to regulate marketing and increase transparency and accountability of broker compensation. We believe these changes are necessary and critical to protecting Medicare beneficiaries.

Thank you for your continued work to enhance the health and well-being of all Americans, and for your prompt attention to this matter.

Sincerely,



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce



Richard Neal
Ranking Member
Committee on Ways and Means

⁸ Centers for Medicare & Medicaid Services, *Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program*, 83 Fed. Reg. 16440 (Apr. 16, 2018) (Final Rule).