

United States Senate

WASHINGTON, DC 20510

COMMITTEES:

ARMED SERVICES
BANKING, HOUSING, AND
URBAN AFFAIRS
SELECT COMMITTEE ON
INTELLIGENCE
VETERANS' AFFAIRS
INDIAN AFFAIRS

April 3, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

I write to express my concerns about the proposed requirement for independent agents and brokers (A/B) to record calls with Medicare beneficiaries, as outlined in Docket No. CMS-4201-P. While I support the overall goal of protecting beneficiaries from bad actors during the enrollment process, I am concerned that this proposed rule as written will have unintended consequences and negatively impact Medicare beneficiaries in South Dakota and across the country. Specifically, I am concerned that the Centers for Medicare and Medicaid Services (CMS) is regulating licensed and certified independent A/Bs in the same category as third-party marketing organizations (TPMO), and I urge you to exclude independent A/Bs from the recording requirement in the final rule.

Licensed and certified independent A/Bs are not the source of the problem CMS is trying to solve, and regulating them as TPMOs is a step in the wrong direction for seniors. Unlike most of the lead generation and marketing entities that are encompassed in the TPMO definition, independent A/Bs are state-licensed, are certified by the plans they contract with and take care of their clients year-round. Independent insurance agencies are generally small businesses that have close, personal relationships with their clients and provide personalized service and expertise. Many of their clients have known them for years, and rely on them for advice and assistance with their coverage and enrollment needs. These are just a few of the ways that independent A/Bs differ from TPMOs, who only interact with beneficiaries during the enrollment process and do not provide the same year-round service.

As stated by CMS, the purpose of the recording requirement is to "strengthen oversight of TPMOs to detect and prevent the use of confusing or potentially misleading activities to enroll beneficiaries in Medicare Advantage (MA) and Medicare Prescription Drug Benefit (Part D) plans." Independent A/Bs should not be subjected to this recording requirement because the success of their businesses depends on having ongoing, personal relationships and providing accurate, trusted information. Additionally, many beneficiaries have stated they do not feel comfortable being recorded or having their conversations stored for 10 years.

Independent A/Bs should not be regulated as TPMOs, but separately through the health plans they contract with in their respective states. CMS has indicated previously that it does not believe it is possible, for the purpose of applying regulatory requirements, to distinguish between independent A/Bs and larger TPMOs. However, as I understand it, health plans already have the ability to identify independent A/Bs, such as “agents of record” who are agents on this line of business or another type of insurance within the agent’s business, so they can differentiate them from other entities like call centers. By utilizing information from the health plans, CMS can also distinguish independent A/Bs and stop regulating them as TPMOs.

I urge you to take these concerns into consideration as you move forward with the rulemaking process. The proposed rule as written will have a negative impact on beneficiaries and hinder independent A/Bs’ ability to offer MA and Part D plans in the future. With fewer independent A/Bs available, more beneficiaries will be left in the hands of the call centers and lead generators this proposed rule was intended to address. On behalf of my constituents and Medicare beneficiaries nationwide, I appreciate your attention to these concerns and look forward to working with you on this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Michael Rounds". The signature is fluid and cursive, with a long horizontal stroke at the end.

M. Michael Rounds
United States Senator