

May 5, 2022

The Honorable Charles E. Schumer
Democratic Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Dear Leader Schumer and Leader McConnell:

On behalf of the membership of the National Association of Insurance Commissioners (NAIC), we write to ask Congress to revisit the federal law that limits the authority of states to oversee Medicare Advantage. Current law only allows states to regulate solvency and licensing – all other oversight is preempted. This has led to a tremendous gap in protections for seniors, especially in the area of marketing.

The NAIC applauds Congress' support for Medicare Advantage (MA). MA plans have helped and benefited millions of senior Americans. However, as state insurance regulators, we are finding an increase in complaints from seniors about confusing, misleading and potentially deceptive advertising and marketing of these plans. Unfortunately, because of federal law, state insurance regulators are not permitted to exercise their oversight authority in advertising and marketing of MA plans.

As you are aware, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (also called the Medicare Modernization Act or MMA) limited the authority of states to oversee MA plans to just solvency and licensing. Before the MMA, states had full authority to review marketing practices, pursue market conduct reviews, and penalize poor actors – but after the MMA states have no such authority. We strongly recommend that Congress amend the MMA to return to the states authority to oversee the advertising and marketing of MA plans.

Since the implementation of the MMA and the loss of state oversight, State Departments of Insurance, as well as State Health Insurance Programs (SHIPs), consumer advocacy organizations, and the media, have reported patterns of overly aggressive, deceptive and abusive marketing and sales practices in the Medicare private plan marketplace.

The NAIC has conducted surveys of State Departments of Insurance and found that states have received consumer complaints about the following:

- Misrepresentations in the marketing and sales of MA plans, particularly Private-Fee-For-Service (MA-PFFS) plans, including misrepresentations about provider networks, provider acceptance of plans, reimbursements, benefits, premiums and other features.
- Inappropriate or confusing marketing practices leading beneficiaries to enroll in MA plans without adequately understanding the coverage into which they were enrolling. (i.e., beneficiaries believed they were signing up for a PDP or a Medicare Supplement (Medigap) Plan, rather than an MA plan, and they did not understand they were disenrolling from Original Medicare.)
- Fraudulent activity, including beneficiaries who were enrolled without any contact with a producer, or after only inquiring about the plan, forged signatures, misrepresentations by producers, or improper use of personal information.
- Aggressive sales practices such as cross-selling, whereby producers used access to beneficiaries (afforded under the MMA), which allows producers to discuss additional coverage options such as PDPs, but instead has led to pressuring beneficiaries into other types of insurance products such as annuities, funeral expense insurance policies or life insurance policies.
- Improper enrollment into these plans of individuals with Alzheimer’s disease or dementia, mentally incapacitated individuals, or beneficiaries with limited English proficiency, as well as unsuitable enrollment of dual-eligible beneficiaries.

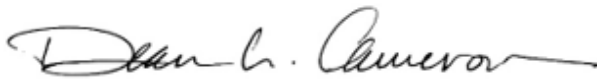
Unfortunately, states are unable to assist consumers in these matters because their hands are tied since the passage of the MMA. Unlike other types of state-regulated health insurance, state insurance departments cannot ensure that marketing strategies or practices are appropriate for this vulnerable population. In addition, state insurance departments are restricted in their authority to take corrective action against a company for misconduct or to have problems rectified in a timely manner. Far too often, consumers must wait months for a resolution, if one is provided at all.

State insurance regulators do have authority over insurance agents and brokers, however, without any real authority over the plans themselves, a wide regulatory gap exists that allows abusive marketing practices to flourish. Without the restoration of oversight authority (or, at least, greater authority) over the plans, state insurance departments are too often unable to prevent the abusive marketing practices.

The federal government oversees the MA plans themselves and sets out rules for the marketing of them. We strongly believe states are better equipped to oversee these plans and protect vulnerable populations, as they do with other health plans.

We urge Congress to allow states to enforce their own marketing and consumer disclosure laws and regulations on MA plans.

Sincerely,



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