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September 19, 2022

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

Dear Administrator Brooks-LaSure:

The Centers for Medicare and Medicaid Services (CMS) released a final rule in May that will revise the Medicare Advantage program and Medicare Prescription Drug Benefit program regulations to implement changes related to marketing and communications requirements. While I appreciate that CMS is taking steps to help ensure that Medicare enrollees are receiving accurate and accessible information about Medicare coverage, CMS should provide more guidance about how to comply with the revised regulations.

The final rule states that, among other requirements, third-party marketing organizations will be required to record sales calls with beneficiaries in their entirety.<sup>1</sup> Furthermore, the final rule defines, for the first time, third-party marketing organizations as being “organizations that are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment.”<sup>2</sup> This means that independent insurance agents and brokers, many of whom were previously not subject to CMS’s marketing and communications regulations, will now have to comply with the revised regulations, including the call recording requirement.

I have heard from a number of constituents who own or work for independent insurance agencies who have struggled to understand how they can comply with these new requirements and what the financial impact to their business may be. CMS has provided no guidance on the call recording requirement, including whether the recorded calls will be subject to Health Insurance Portability and Accountability Act (HIPAA) requirements, how long the recordings must be retained, how the recordings will be used for compliance efforts, and which, if any, calls would be exempted from the requirement. Guidance in this area is important not just to assure independent agencies that they are in compliance with the provisions of the final rule, but also to assure potential enrollees that they can trust that the personal information they are sharing over the phone will be recorded and stored in a responsible and secure way.

I support the overall goal of ensuring that bad actors do not confuse or potentially mislead Medicare enrollees during the enrollment process; however, the final rule has led to

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<sup>1</sup> <https://www.federalregister.gov/d/2022-09375/p-1294>

<sup>2</sup> <https://www.federalregister.gov/d/2022-09375/p-1292>

confusion and apprehension among many independent insurance agencies about the implications of the new requirements. It is imperative that CMS issue clear guidance to stakeholders clarifying their obligations under the final rule so that independent agents and brokers can continue to help the thousands of enrollees they serve find a Medicare plan that best meets their needs.

Sincerely,



Susan M. Collins  
United States Senator