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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR
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August 18, 2022

The Honorable Andrew R. Stolfi,
Commissioner
Oregon Department of Consumer and
Business Services
Division of Financial Regulation
350 Winter Street Northeast
Salem, Oregon 85007

Donna Delikat, Interim Director
Senior Health Insurance Benefits Assistance
(SHIBA)
Oregon Department of Human Services,
Aging and People with Disabilities
500 Summer Street Northeast, E-15
Salem, Oregon 97301

Dear Commissioner Stolfi and Interim Director Delikat:

I write seeking information about potentially deceptive marketing practices being conducted by insurance organizations offering Medicare benefits under the Medicare Advantage (MA) program, which will soon account for more than half of Medicare's 60 million beneficiaries, and the Part D prescription drug program, which currently serves 50 million beneficiaries.¹ The Senate Committee on Finance has jurisdiction over health programs under the Social Security Act, which includes MA health plans and Part D drug plans. As the Chairman of the Finance Committee, I am responsible for Senate oversight of these important and growing programs.

While the Centers for Medicare & Medicaid Services (CMS) has authority to regulate MA and Part D plan marketing materials that intend to inform beneficiaries of their coverage options, I am concerned about the increase in beneficiary complaints regarding these materials. As of May 2022, CMS reported complaints had more than doubled from 2020 to 2021.² Worse yet, I have heard alarming reports that MA and Part D health plans and their contractors are engaging in aggressive sales practices that take advantage of vulnerable seniors and people with disabilities. For example, in its most recent survey of state insurance commissioners the National Association of Insurance Commissioners (NAIC) reports there has been an increase in complaints from seniors about false and misleading advertising and marketing of MA plans.

¹ 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).

² Ibid.

Unfortunately, false or misleading advertisements and fraudulent sales practices are not new issues for Medicare beneficiaries. In 2009, the Government Accountability Office (GAO) issued a report on MA marketing finding that, “CMS took compliance and enforcement actions for inappropriate marketing against at least 73 organizations that sponsored MA plans from January 2006 through February 2009.”³ In 2010, the Health and Human Services Office of the Inspector General (HHS OIG) similarly examined the marketing of MA plans. Among other things, HHS OIG found that “the number and topics of sales agent marketing complaints remained unchanged after implementation of sales agent marketing regulations.”⁴

Given this trend in complaints, I am seeking to better understand the nature and extent of these marketing and enrollment issues. Your offices of state insurance regulation and State Health Insurance Assistance Programs (SHIPs) are working on-the-ground and are uniquely positioned to hear directly from Medicare beneficiaries about false or misleading marketing and sales practices in MA and Part D. I therefore ask for your responses (jointly or separately) to the following questions by September 16, 2022:

1. How many complaints about MA and/or Part D plan marketing have you received in 2019, 2020, 2021, and 2022?
 - a. If possible, please segment these complaints by Third-Party Marketing Organizations (TPMOs)⁵.
2. Do you have any examples of potentially false or misleading marketing materials and advertisements in MA or Part D, including mailers, robo-calls, websites, television commercials, and online advertisements? If so, please include those in an appropriate format.
 - a. Are complaints about certain types of marketing materials more prevalent than others? If so, please provide any qualitative data you have to describe this.
 - b. We are also interested in other false or misleading marketing activities where visual or audio examples may not be possible, including fraudulent activity (e.g., beneficiaries who were enrolled without any contact with a producer), sales practices like cross-selling, and improper enrollment. Please provide any quantitative and qualitative data you have to describe these activities.
3. In your state, what are the responsibilities of the agent or broker to protect consumers from potentially false or misleading marketing?

³ “CMS Assists Beneficiaries Affected by Inappropriate Marketing but Has Limited Data on Scope of Issue,” Government Accountability Office (Dec. 2009), *available at* <https://www.gao.gov/assets/gao-21-36.pdf>
<https://www.gao.gov/assets/gao-10-36.pdf>

⁴ “Beneficiaries Remain Vulnerable to Sales Agent’s Marketing of Medicare Advantage Plans,” Health and Human Services Office of the Inspector General (March 2010) *available at* <https://oig.hhs.gov/oei/reports/oei-05-09-00070.pdf>

⁵ TPMOs refer to organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment

For the questions below to the extent possible please provide: 1) any quantitative data to help us understand the scope and extent of the issue or trend, and 2) any case examples, consumer stories, or other qualitative data to describe the issue or trend:

4. Have you seen any differences in reports of complaints of false or misleading marketing among groups of Medicare beneficiaries (e.g., lower income, dual-eligible, Black or Hispanic beneficiaries, beneficiaries with disabilities)?
 - a. Are there certain geographic regions where complaints of false or misleading advertising are more common?
 - b. Are certain MA or Part D product types more likely to be the subject of consumer complaints or found to have false or misleading marketing language?
5. Is false or misleading information typically found in describing certain aspects of the product (e.g., provider networks, provider acceptance of plans, reimbursements, benefits, premiums, cost sharing, supplemental benefits, or other features)?
 - a. Are there certain benefits that have been associated more frequently with these complaints (e.g., meals, scooters, \$0 cost sharing or premiums, dental services, over-the-counter cards)?
 - b. Would enrollment in these products result in a greater number of prescriptions being filled by a particular pharmacy or pharmacy chain?
6. Are you aware of marketing materials making comparisons between Medicare Advantage and Medicare Supplemental Insurance products that are false or misleading in nature?
7. Have you observed trends in complaints of unsolicited contact of beneficiaries, including trends in the method or sources of unsolicited contact (e.g., telemarketers, SMS texting, online outreach, online targeted advertising)?
8. Are there certain types of organizations (e.g., TPMOs, health insurance carriers, pharmacies, provider organizations) that account for a disproportionate share of complaints? If so, which types?
9. Are there certain parent organizations, TPMOs, or other market participants (such as pharmacies or provider organizations) that account for a disproportionate share of complaints? If so, which ones?
10. Are there parent organizations, TPMOs, or other market participants (such as pharmacies or provider organizations) that have provided false or misleading marketing materials? If so, which ones?
11. Are there any other common MA or Part D plan marketing practices that you think we should know about?

Thank you for your prompt attention to this important matter. These insights and materials will help my office better understand the beneficiary impact of these practices. If you have any questions or wish to provide additional comments, please contact Eva DuGoff (eva_dugoff@finance.senate.gov) and Melissa Dickerson (melissa_dickerson@finance.senate.gov) on my staff.

Sincerely,



Ron Wyden
Chairman
Committee on Finance

Cc: National Association of Insurance Commissioners (NAIC); Annie McColaugh, Director of Federal Affairs, Office of Governor Kate Brown, Oregon; Jane-Ellen Weidanz, Long Term Services and Supports Administrator, Senior Health Insurance Benefits Assistance (SHIBA), Oregon Department of Human Services, Aging and People with Disabilities