



State of Vermont
Department of Financial Regulation
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March 7, 2022

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4192-P
P.O. Box 8013 Baltimore, MD 21244-8013

Via Regulations.gov

To Whom It May Concern:

The Vermont Department of Financial Regulation submits the following comments on the proposed regulation “CY 2023 Medicare Advantage and Part D Proposed Rule” published January 12, 2022. Among other things, the Department works to maintain affordability and availability of insurance for Vermonters, to ensure that insurers can meet their contractual obligations, and to protect Vermont consumers against unfair and unlawful trade practices. In its discharge of these obligations, the Department is writing to express concern with the proposed regulation.

In particular, the Department is concerned that the proposed regulation’s provisions regarding third-party marketing organizations (TPMO) of Medicare Advantage (MA) Plans do not go far enough in addressing issues reported by Vermont consumers. While the Department applauds CMS’s efforts to strengthen oversight of marketing and communications for MA and Part D plans, the proposed regulation would allow TPMOs to continue giving Medicare beneficiaries incomplete or misleading information about the plans and options available to them.

As in other parts of the country, Medicare beneficiaries in Vermont are deluged with solicitations for MA and Part D plans that may have narrow provider networks, unexpectedly high costs, or are otherwise inappropriate for their individual circumstances. Choosing the wrong plan based on a slick advertisement can have profound and lasting consequences. This is particularly so in a rural state like Vermont, where provider access is problematic even for those with broad provider networks.

Because Vermont’s guaranteed issue protections, like those in much of the country, are limited to specific qualifying events and one open-enrollment period, Medicare beneficiaries who



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switch from a Medicare Supplement plan to an MA plan cannot easily go back to their Medicare Supplement plan if the MA plan does not meet their needs.

MA plans and the insurance producers who sell those plans are licensed by the state, creating a public expectation that the state also provides consumer protections. However, unlike fully-insured health insurance or even Medicare Supplement insurance, the state has no authority to establish marketing standards for MA and Part D plans. This disconnect is confusing for consumers and unnecessarily deprives them of available state-level consumer protection resources.

The Department therefore asks that CMS consider language expanding the role of the state regulators to oversee marketing of MA and Part D plans. The Department also supports comments made by the National Association of Insurance Commissioners (NAIC) suggesting strengthening marketing disclosure language and requiring TPMOs to advise Medicare beneficiaries of the option to call 1-800-MEDICARE or use medicare.gov to find out about all of the options available to them.

Thank you for this opportunity to comment on the proposed regulation. My staff and I are available to discuss these or other issues at any time.

/s/ Michael S. Pieciak

Michael S. Pieciak
Commissioner
Vermont Department of Financial Regulation

