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MEETING RECAP AND COMMENTARY

Date: 9/23/2022

TO: Senate Finance Committee | Eva DuGoff & Melissa Dickerson

Hi Eva and Melissa,

First, I'd like to thank you for your time today. Per our conversation, I was hoping to provide a recap of our discussion as well as additional talking points. Per our conversation, we were discussing both the Letter sent on August 18th, 2022, and the concerns that the Committee on Finance has regarding BOTH marketing and sales practices used in the senior markets.

The overarching qualitative discussion points I addressed were:

1. Oversight of complaints.
2. Depth of penalties.
3. Lead generation.
4. Enrollment channels.
5. Conflicts of interest and accountability.
6. Support for consumers.

// OVERSIGHT OF COMPLAINTS

My initial concern when becoming aware of the letters sent to states is that states DO NOT have regulatory authority over the MA and PDP markets. Most recently, upon the CMS Final Rule passed in May, there were attempts by the NAIC to make this concern known. In my opinion, having a centralized federal agency like CMS to oversee the Medicare market makes sense. Especially when considering federal funds are used both to cover medical claims, and to subsidize Medicare Advantage plans. That said, in this particular case, my concern was that the request for information was, in my opinion, misplaced. Additionally, while I think



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calling on state based SHIPs might be a logical resource for recording complaints, they have a major conflict of interest. The broader brush stroke they paint on the inadequacy of the agent and broker community, the more they stand to gain as the “better resource” while subsequently receiving additional federal funds.

Our concern is states defer to CMS, and CMS defers to carriers to monitor themselves, and to self-report complaints.

// DEPTH OF PENALTIES

From my vantage point, the liability that Insurers face by these complaints is an impact to their star rating. Being that the star rating has SEVERAL metrics that create a weighted average score, this particular metric may cause a half star to be removed from the plan. But a 4.5 star plan (assuming everything else is fine), that achieves 50% market share due to predatory marketing practices, doesn't have a material impact on the Medicare payments received by the plan.

// LEAD GENERATION

In his letter to Commissioners, Senator Wyden indicated CMS's authority to regulate MA and Part D plan marketing materials and his concern about the increase in beneficiary complaints regarding these materials. Further, he mentioned the NAIC report of “an increase in complaints from seniors about false and misleading advertising and marketing of MA Plans.”

Quite naturally, as someone either nears age 65, has already attained this age, or is nearing two years of disability, they MUST act regarding Medicare. The three questions they are faced with are “When?”, “Supplement or Advantage?”, and “Which plan in either category best fits my needs?”

For MA and PDP plans, this is reviewed annually to confirm whether what they currently have is still prudent for their needs.



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Compliant marketing facilitated directly by insurance companies is done by carrier packets that are mailed to beneficiaries. In many cases, exceeding 30 pages, plans from both Supplement and Advantage carriers come en masse with different explanations to the three questions above based on each packet's unique vantage points. Add to the complexity, bad actors routinely bombard these same individuals with calls, texts, and emails about signing up. Lastly, commercials featuring actors that are household names, and other letters about acting now are routinely sent to consumers. At an event yesterday with Commissioner Michael Humphreys he referenced that the insurance schemes he sees are akin to whack-a-mole, where once you address a problem, another crops up.

The problem we see with the lead generation originates from the following:

Marketing materials that OVER emphasize benefits that are actually only available in isolated areas. Like TV commercials that hype up savings that are really only available in one county, but make it appear is a large number of people are missing out (effectively bait and switch).

We are also concerned about companies that are out of this country, thus outside of the purview of US regulators, that have the sole purpose of generating a lead and then forwarding the consumer to a US based person to proceed with the enrollment. The US based actor skirts around compliance because while they are technically required to supervise any lead generator, there is no accountability to how the senior was contacted or referred to the agent.

In addition to international lead generators, domestic lead companies will use a website to encourage a consumer to "opt in" to being contacted and then use that authorization to sell the consumers data to many different agents.

In my humble opinion, lead generation companies should not exist, and any purchased lead attached to a complaint should put the full weight of the complaint on the shoulders of the organization who purchased the lead.

Maybe a less taxing recommendation would be that lead generation companies are **required** to have a consumer attestation that "I understand that this is a lead generation company, and



my data will be sold for the purpose of enrollment in a plan.” Without said attestation on file by the agent or lead purchaser would be a violation.

// ENROLLMENT CHANNELS

Once we get beyond how the senior got to a qualified individual to discuss their Medicare options, the next question is what tethers or conflicts of interest exist that may limit the scope or recommendations the senior receives. Below is a chart of the potential solutions available to a senior cross referenced with the organizations available to provide support.

	Call Centers	Independent brokers	Captive agents	1800 Medicare	SHIPs
Medicaid	✗	○	✗	✓	✓
MA	✓	✓	○	✓	✓
PDP	✓	✓	○	✓	✓
Medigap	○	✓	○	✓	✓
Dental/Vision	○	✓	○	✓	✓
PACE	✗	○	✗	✓	✓
State License	✓	✓	✓	✗	✗
Can Recommend?	✓	✓	✓	✗	✗
Conflict Free	✗	✓	✗	✓	✓
Marketing Strategy	Buy leads	Word of mouth	Buy leads + Mailing	Mailing	Events



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As far as the consumer is concerned, Independent Brokers, Captive Agents, and SHIPs tend to be the most involved in the regional communities that their physical footprints are in.

In my case, I am routinely speaking with the friends of clients who are considering retiring. Equally, I'm routinely working with the financial advisors, CPA's, and Attorney's of seniors in my area whose clients are considering making their transition to retirement. These individuals are often middle/upper income individuals who are looking for guidance for IRMAA, guidance for comparing the concepts of Supplement to Advantage plans, and guidance for broader networks based on their travel plans both internationally and domestically.

There are other brokers like myself, there are brokers who work with caseworkers and have honed their skills around supporting people with disabilities, there are brokers who specialize in rural populations, and underserved populations. There are brokers that service all walks of life.

SHIPs are often in the community because of their focus on free events. Volunteers routinely show up in social settings, like community libraries and hospital common spaces, to discuss options for seniors. They tend to focus on the most vulnerable, which is why their unique skillset is well suited to the low-income subgroup.

Captive Agents are in the community primarily due to the brand they work for. Carriers who promote their company via billboards and advertisements use their captive agents as the backstop of the marketing. Similar to call centers, both captive agents rely on outbound marketing where they are treated as a vendor and most of their work is transactional. Unlike a call center, captives often tout their expertise about the specific product they offer, but this is because they are limited to a very narrow sliver of the total available plans available in a market: their carriers plans only.



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// CONFLICTS OF INTEREST

CAREER AND CAPTIVE AGENTS

It is evident that career or captive agents have conflict of interest in the scope of offerings they have. This is akin to showing up at every bake sale trying to convince the world that every person should eat White Chocolate & Macadamia Nut cookies. While they are delicious, beyond the obvious concern for people with nut allergies, some people want thin mints. This is a fact. (I am the person who wants a Thin Mint).

MEDICARE CALL CENTER AND SHIPS

1800 Medicare and SHIPs have the conflict of authority. Legally they cannot recommend a SPECIFIC plan to meet the needs of a consumer, nor can they give any income or tax guidance. So, while this doesn't cause them to misrepresent solutions, it does encourage SHIPs to focus on a specific part of the subpopulation and to have lower skills when it comes to income and complex questions. This is a concern, especially when you consider the Medicare & You mentions the SHIP program 36 times where brokers are referenced six times.

PRIVATE CALL CENTERS

Call center agents have the conflict of the call center expectations.

Two publicly traded companies, which allow me to review their SEC disclosures, are GoHealth and Select Quote. Their annual 10k report cements their issues:

Select Quote's statement: "Our business requires access to a large quantity of quality insurance sales leads to keep our agents productive."

GoHealth's statements: "The Company's direct channel expenses primarily consist of costs for e-mail marketing and direct mail marketing." and "Marketing partner channel expenses primarily consist of fees paid to marketing partners and affiliates. Marketing costs are expensed as incurred."



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Both state something similar to this: (Direct quote is from Select Quote) “Due to the complexity, periodic modification and differing interpretations of insurance laws and regulations, we may not have always been, and we may not always be, in full compliance with them. There can be no assurance that we, our employees, consultants, contractors and other agents are in full compliance with current and/or future laws and regulations or interpretations. Any such non-compliance could impose material costs on us, result in limitations on the business we conduct or damage our relationship with regulatory bodies, our insurance carrier partners and consumers, any of which could have a material and adverse effect on our business, operating results, financial condition and prospects.” (Pg 24)

They prioritize getting “leads” in and out as efficiently as possible. Just their public facing verbiage illudes to the fact that the focus is on the cattle shoot, and not the consumer.

INDEPENDENT BROKERS

The biggest conflicts that independent brokers face are related to the scope of options. Being that they are independent, they can choose to have the broadest selection of plans or the narrowest. With each additional plan they offer, they must complete product specific training annually. This can be difficult when there are 50+ trainings for a broker depending on their markets each year. This is a massive undertaking. The broker can decide not to pursue specific carriers if they **know** the carrier is not competitive in their market, saving themselves some training time.

Additionally, with scope, brokers may choose to either assist or avoid Medicaid. This conflict is due to zero payment. While SHIPs receive the bulk of their payments via Grants and work with Medicaid frequently, Brokers are ineligible for the same grants, and Medicaid does not pay anyone to assist in applying. This is contentious because seniors need help navigating Medicaid, and brokers who publicly assist with Medicaid can quickly reach 20+ applications per month of unpaid labor. In a situation where their time is already capped (renewals each October 15th – December 7th FEASIBLY only allow for ~360 meetings during the 36 business days that make up the Annual Enrollment Period. Effectively, they would be turning away



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clients that need help that the Broker is paid for to help clients who need help where the Broker is not paid.

// SUPPORT FOR CONSUMERS

If SHIPs and Brokers partnered together, then each other's expertise could shine through and help more consumers. Instead, many experiences we have seen firsthand almost pit SHIPs and Brokers against one another.

We also need better data from CMS and carriers about what IS and ISN'T working? Complaints need context that can be easily, and scalibly be parsed.

ANY conflicts should be disclosed. This includes Medicare.gov and SHIPs misrepresenting as a source of truth when they are limited in what they CAN say due to licensing and authority.

Lead Generation and Marketing Organizations need to go away. If a consumer is turning 65, and needs Medicare, they are going to find it with our without aggressive (and often misleading) TV ads.

I hope this helps add context!

Thank you!

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