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*Submitted electronically via <http://www.regulations.gov>*

May 13, 2022

Chiquita Brooks-LaSure, MPP  
Administrator Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
ATTN: CMS-4199-P  
7500 Security Blvd.  
Baltimore, MD 21244-1850

**RE: CMS-4199-P Medicare Program – Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules**

Dear Administrator Chiquita Brooks-LaSure:

I am submitting comments on proposed regulation CMS-4199-P as a consumer, Medicare beneficiary and a SHIP counselor in Pennsylvania. I also serve as a Consumer Representative to the NAIC, but the comments in this submission are solely my own. I am very pleased to see the changes being proposed to provide new Special Enrollment Periods (SEPs) for seniors and people with disabilities and to make Part B coverage effective the month after Part B enrollment. These are common sense actions that will enable individuals who inadvertently miss their IEP, current SEP or GEP enrollment periods. When I give talks to the public as a SHIP counselor, I tell them they should not feel bad if they find Medicare rules too confusing, because the Medicare for Dummies book published by AARP is 432 pages long.

There is one section of the proposed regulations that I believe should be modified. Specifically, the one that establishes an “SEP for Health Plan or Employer Misrepresentation of Providing Incorrect Information” (Proposed Rule Section II.A.2.b). Recognizing employer misrepresentation is common and of concern is the reason this SEP is proposed. It is my experience and that of other SHIP counselors that employers frequently do not understand federal regulations regarding Medicare enrollment. A case in point was my personal experience when I was about to retire a few years ago. The HR department of my employer, a regional health system, recommended that I sign up for COBRA instead of enrolling immediately in Medicare. Had I done that and delayed enrolling in Medicare until my COBRA expired, I would have been subject to a Part B premium penalty for the rest of my life. Had I followed my company’s advice, it would have also been a poor financial decision. In addition to incurring a Part B penalty, COBRA would have cost me over \$550 per month, much more than the cost of

Medicare Part B, a Medigap F plan (that would have paid all Medicare deductibles and copays) and a good Part D drug plan.

Under the proposed rule for an SEP due to employer misrepresentation, I would not have been able to get an SEP, because the employer misrepresentation was made verbally. I would not have had any written documentation to show I had been misinformed when I retired, and if I tried to enroll in Medicare when my COBRA coverage expired 18 months later, it would be difficult for my employer to attest to that fact. The problem with the proposed evidence requirement is that it does not recognize what happens in the real world – many, if not most, employees who receive advice about Medicare enrollment from their employers do so by speaking with their HR departments. Most do not get advice in writing.

To address this problem, I request that CMS add an additional evidence requirement option for granting this SEP. This option would consider signing up for COBRA upon retirement instead of signing up for Medicare as sufficient evidence. Signing up for a COBRA plan involves dealing with an individual's employer human resource function. And electing COBRA over enrolling in Medicare, when Medicare was clearly an option, indicates a high probability that the employer's HR function supported such an action. Furthermore, if an employer's health plan was considered "creditable coverage" while the individual was actively working, it certainly was creditable coverage under COBRA. Not treating it as such has never made sense.

If the change I am suggesting is adopted, then in those cases, CMS should allow an individual to obtain an employer misrepresentation SEP at the time the individual files for such an exception, but no later than the date that the person's COBRA expires. That SEP would expire 2 months later, consistent with the timeline proposed for this type of enrollment exception.

Thank you for the opportunity to comment on CMS-4199-P. I hope CMS will seriously consider my suggestions. If CMS staff has any questions regarding this submission, I would be happy to discuss it with them. I can be reached at 610-737-7331 or at [harry@tingnet.com](mailto:harry@tingnet.com).

Respectfully,



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Healthcare Consumer Advocate

c: Judith Stein, JD, Executive Director, Center for Medicare Advocacy  
Frederic Riccardi, President, Medicare Rights Center