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Submitted via Regulations.gov

Office of the Secretary
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Medicare & Medicaid Services
Attention: CMS-4205-P
7500 Security Boulevard
Baltimore, MD 21244

Re: Comment Letter on Proposed Guardrails for Agent and Broker Compensation — *Medicare Program; Contract Year 2025 Policy and Technical Changes*

To the Office of the Secretary:

I write on behalf of AmeriLife Group, LLC ("AmeriLife" or "we"), a national field marketing organization ("FMO") and leader in developing, marketing, and distributing life and health insurance, annuities, and retirement planning solutions. For more than 50 years, our organization has prided itself on providing financial solutions to help consumers live longer, healthier lives. We partner with a wide range of insurance carriers to provide choice, value, and quality to our customers, served through a distribution network of over 300,000 independent insurance agents and financial professionals and over 120 marketing organizations and insurance agencies throughout the U.S.

Our comments are focused on proposed changes to 42 C.F.R. § 422.2274 governing compensation between and among agents, brokers, and other third parties. We are aligned with CMS in its desire to ensure that Medicare beneficiaries enroll in the Medicare Advantage (MA) and Prescription Drug Plan (PDP) plan that best serves their health care needs and their financial situation. Furthermore, we believe that, as a leading FMO, our platform supports this objective by enabling the independent agents and brokers we work with to objectively assess and recommend the plan best suited for beneficiaries'

individual needs, and to service those needs and their health insurance policies in a personalized and expert manner, year after year.

Throughout this submission, we will provide you with numerous examples that highlight the value we offer to carriers, independent agents and brokers, and beneficiaries, in furtherance of our common goal to ensure a fair and equitable MA and PDP marketplace. We will also address the concerns CMS has raised regarding improper broker and agent incentives and aggressive marketing practices, and explain why the AmeriLife model protects against some of the concerning activity CMS has seen in the marketplace. Finally, we will offer feedback on the specific proposals, some of which we believe will not have the intended effect, and in some cases, could have significantly negative impacts on the industry and the Medicare beneficiaries who rely so heavily on independent agents for the purchase and servicing of health insurance products.

Summary of AmeriLife's Comments

For the agency's convenience, we have summarized our comments into the bullet points below.

- FMOs like AmeriLife provide valuable services to the Medicare Advantage and Medicare Part D marketplace.
    - AmeriLife helps independent agents and brokers – including many small businesses – connect with a greater number of carriers to offer Medicare beneficiaries more choice and a better purchasing experience.
    - AmeriLife helps carriers of all sizes – including smaller local and regional carriers – efficiently maintain a broader network of independent agents and brokers.
    - AmeriLife helps carriers discharge their regulatory obligations to provide training and education and monitor broker and agent marketing activities.
    - AmeriLife's model promotes broker and agent objectivity and ensures that beneficiaries are being matched with the most appropriate product for their health care needs.

- CMS should clarify that the proposed prohibition on contract terms (proposed 42 C.F.R. § 422.2274(c)(5)) and limits on compensation apply to broker and agent incentives, and the regulations would not impinge on carriers' and FMOs' ability to enter into otherwise compliant services contracts.

- Before finalizing any regulations restricting agent and broker compensation, CMS should further evaluate the validity of its assumption that there is a causal connection between increases in administrative fees and increases in consumer complaints. AmeriLife's own experience – which we would be happy to share with CMS – does not suggest a causal connection.

- CMS should remove expense reimbursement from the proposed new definition of compensation at 42 C.F.R. § 422.2274(a), and exclude it from the compensation caps. Limiting an agent's or broker's ability to recoup legitimate expenses from carriers could cause financial hardship, particularly to small businesses.

- CMS should defer any decisions on including other administrative fees in the compensation cap until it more thoroughly studies the fair market value of the various administrative services that agents and brokers perform in connection with enrollment activities.[1]

Helping Independent Agents Better Serve Their Customers

AmeriLife partners with carriers of all sizes to help ensure that independent insurance agents have the ability to represent a wide variety of MA and PDP plans in their area. We provide agents with the tools and knowledge they need to assist the beneficiaries with whom they work in carefully considering all of the factors that are important in selecting the health insurance coverage that is best for them, including such factors as cost, availability of doctors, coverage levels, and prescription drug options.

[1] CMS does not explain how it determined that an increase of $31 is appropriate to capture the value of administrative services that agents and brokers perform. Further, CMS appears to be relying on a CDC document from 2011 in estimating the value of completing health risk assessments. Not only is the document outdated, but it also does not appear to address the fair market value of such services.

It is important to understand that the independent agents and brokers with whom we work represent multiple carriers – including smaller local or regional carriers – in their local market. These independent brokers and agents help their clients by reviewing the various benefits and features of the plans that are available to them, locally, thereby providing a much more objective and comprehensive approach to the sales process, as compared to the process followed by captive (carrier-affiliated) agents, who can only present and support enrollment into plans that are available from the carrier they exclusively represent. Our independent agents develop long-standing, trusting relationships with their clients who come to rely on them for unbiased, expert knowledge about their health insurance coverage. Our distribution approach is grounded primarily in one-on-one, client-driven relationships, where licensed insurance agents meet with their clients, individually, and present them with product alternatives from a variety of carriers to help them select the product that best meets their health care and financial needs.

AmeriLife, as an FMO, provides many services to the independent agents who work on its platform, including the management of broker and agent licensing and appointment processes. We have the systems, tools and agent-dedicated personnel in place to serve as a single point of contact for agents to assist them in managing and tracking their licensing and appointment status across numerous carriers. If independent agents and brokers had to contract with multiple carriers, on their own, it's highly unlikely they'd be able to maintain the number of carrier relationships they have with us due to the excessive administrative burden involved (different paperwork, technologies, processes, compliance requirements, bureaucracy, etc.).

Since we're able to manage the administrative burden of the licensing and appointment process on behalf of carriers and independent producers, the brokers and agents who are on our platform are able to present a much broader product set to beneficiaries. As a result, consumers who work with our independent agents and brokers get the benefit of choosing products from a wide variety of carriers to find the solution that best suits their needs. Without these FMO services, independent producers would likely affiliate with fewer carriers, beneficiary choice would be limited, and the likelihood that consumers would be placed in suboptimal plans for their unique needs would increase.

Furthermore, AmeriLife enables the efficient distribution and utilization of leading enrollment and post-enrollment technologies. Because we pool the payments we

receive from multiple carriers for our services, we can acquire, develop, and pay for technology systems, at scale, that our independent sales force can leverage at the point of sale and for post-enrollment servicing. By partnering with AmeriLife, independent agents and brokers have access to point-of-sale tools to compare product features and costs of products from various carriers to help them advise their clients, as they consider their health insurance options. These systems compile the various features and benefits of the MA and PDP plans available in their local areas and keep them up-to-date, so when agents and brokers meet with beneficiaries, they can easily compare the features available in the plans and present them to their clients in a coherent manner. These tools not only facilitate an efficient and informed enrollment processes, but many have additional features to support post-enrollment and ongoing servicing activities for consumers.

Independent agents who work with AmeriLife are supported by dedicated specialists who are trained experts in the MA space (and other product lines). They are the primary point of contact for agents on all key product updates, market trends, changes in carrier procedures, the latest technology advancements, and general business coaching, etc.

AmeriLife also offers brokers and agents training and education services on an array of products, which is a function that the individual carriers would otherwise have to provide. Through this training and education, AmeriLife ensures that independent brokers and agents receive required product and industry training that educates them on the MA products they sell and the regulatory requirements governing such sales. We administer and track such training and ensure that no one sells a product for which they are not trained.

AmeriLife and its downline partners administer classroom-style training to agents on such topics as Medicare Options for the Current Year, Medicare Preventive Care Services, Using the Medicare Part D Plan Finder, Navigating Medicare Part D Appeals, Medicare Low-Income Benefits, and Transitioning to Medicare from Expansion Medicaid. These courses are carrier-agnostic and help ensure the agents and brokers with whom we work are equipped with the latest industry trends and information, so when they meet with their clients, they can provide them with objective advice on the health insurance options that are available to them.

AmeriLife also provides a number of services to help agents and brokers market their services, by developing, reviewing, and approving marketing material that helps beneficiaries understand the products they purchase. Often, we are responsible for obtaining carrier approval and regulatory approval for such material from CMS. We assist in the recruiting and supervising of brokers and agents, and engage in consumer lead generation through compliant sources. We use our scale and independence to help carriers publicize their products, including new product features to agents and brokers, allowing carriers to leverage our ability to easily communicate with our partners in the field to get critical messaging out to hundreds of thousands of producers.

The AmeriLife platform allows agents and brokers to provide more choice to their customers, not less. In designing reforms to address CMS' concerns about abusive marketing practices, CMS should be careful to preserve the ability of FMOs, like AmeriLife, to continue to support independent agents and brokers with cost-effective solutions to maximize plan options for their customers. Without such solutions in the marketplace, agents and brokers will likely gravitate toward representing the most dominant, but not necessarily the best, health insurance carriers for beneficiaries in their region. This, again, would result in limited consumer choice and less competition among carriers, as the bigger players would dominate the distribution landscape and independent agents would struggle to remain independent. Such an outcome is counter to the Administration's objectives to promote competition and protect beneficiary choice.

Helping Carriers Manage Distribution and Compliance

Carriers have come to rely heavily on FMOs because we have demonstrated a proven ability to perform services in an effective and efficient manner, and we provide the carriers with a centralized means to manage a variety of functions that they, otherwise, would have to manage themselves. For years, carriers have moved away from providing the services that FMOs provide to support the sale of health insurance products. FMOs have filled that void and provide critical support to carriers and agents to assist in the distribution and administration of health insurance. There is no way that independent agents, on their own, would be able to replicate the functionality that FMOs provide them with their limited resources.

The carriers understand that we have strong relationships with our independent brokers and agents and independent agencies, and they rely on our ability to communicate effectively with our independent sales force to efficiently discharge services on their behalf. By contracting with FMOs throughout the country, carriers can reach hundreds of thousands of independent brokers and agents effectively and efficiently, and they can fix their costs related to the services that FMOs provide on behalf of numerous carriers, essentially outsourcing critical "middle office administrative" functions, so they can focus on their top priorities, such as product development, administration, risk management, and beneficiary services.

Carriers also rely on FMOs to provide critical sales supervision and compliance services. We are highly vested in helping to ensure the MA and PDP sales process is ethical, and we devote significant resources to promoting ethical business practices and complying with applicable regulations. Our associates engage in numerous business functions on behalf of carriers to help ensure that brokers and agents comply with applicable regulatory requirements, including but not limited to reviewing marketing material, facilitating agent licensing and contracting, auditing call recordings to ensure appropriate beneficiary interactions, resolving customer complaints, and managing carrier corrective action plans. Carriers rely heavily on our ability to oversee the distribution process so, again, they can focus on developing and administering competitive insurance products and engaging in the pooled risk management activities that are central to the efficacy of their product offerings.

Ensuring Broker and Agent Objectivity and Appropriate Plan Selection

The service payments that carriers pay AmeriLife do not get passed through to selling agents and brokers. We use those payments from carriers to perform the services we describe herein *on behalf of all of the carriers with which we contract*. In other words, no part of this funding from carriers contributes to any agent's or broker's compensation, and therefore, does not provide any incentive to agents and brokers to sell one carrier's product over another. In fact, agents and brokers have no visibility into the service payments AmeriLife receives from carriers, so there is no way they would or could be influenced to sell one carrier's product over another based upon the funds we receive from carriers to perform services on their behalf.

In addition to service-related payments, we receive separate “marketing allowances” from carriers. The term marketing used here means consumer and member outreach and funds are used for reimbursements. If these funds were not provided to FMOs, they’d likely still be spent by carriers to market and enroll customers with captive agents in their own specific plans. These payments represent a small portion of fees paid by carriers and in our view do not materially impact agent objectivity.

Specific Feedback and Recommendations

1. Prohibition on contract terms that create inappropriate incentives (42 C.F.R. 422.2274 (c)(5))

While we acknowledge there should be no financial or other incentives that improperly influence agents or brokers to sell one carrier’s product over another, we’re concerned the language in 42 C.F.R. 422.2274 (c)(5) could be interpreted to limit or restrict our ability to negotiate with carriers for the outsourced services we provide.

It is evident carriers value the services FMOs provide in the marketplace because they continue to rely on FMOs to access hundreds of thousands of independent agents and brokers to sell their plans. FMOs have proven to be cost-effective stewards of critical technology, marketing, and compliance services, and we hope, for the sake of the MA and PDP sales process, that the new provision related to contract requirements does not interfere with the commercial negotiations and the existing service agreements we have in place with carriers.

We read the new language as targeted at incentives that will skew the objectivity of agents and brokers who interface directly with Medicare beneficiaries. We do not interpret the proposal as preventing FMOs from negotiating services agreements with carriers. Indeed, CMS’s authority to regulate compensation at Section 1851(j)(2)(D) of the Social Security Act relates to broker and agent incentives, and not to services agreements with other third parties.

We negotiate our agreements with carriers, individually, to ensure we can provide the services that we agree to, effectively and efficiently, based upon the terms and consideration contained in each carrier agreement. These agreements are the by-product of arms-length negotiations by sophisticated

parties in a commercial setting. We do not believe CMS has the authority to implement caps or limits on the payments we receive from carriers for the services we provide on their behalf. We use the consideration we receive from carriers to provide critical services to agents, brokers, and carriers to help ensure MA and PDP plans are marketed in compliance with applicable regulations and the beneficiary experience is positive.

We feel strongly that we do not, in any way, create an environment where agents and brokers are unduly incented to favor one carrier's product over another, and we review each of our carrier contracts and relationships to ensure that none of them interfere with an agent's or broker's ability to objectively assess and recommend the plan which best fits a beneficiary's health care needs, as required in the Proposal.

2. Perceived correlation between increasing administrative fees and beneficiary complaints

An assertion in the preamble that we believe requires further consideration relates to the implication that there is a correlation between compensation practices and an increase in the number of customer complaints related to MA sales. We receive and manage customer complaints on behalf of many carriers, and we have no evidence that the root cause of the complaints we receive from beneficiaries relates to compensation practices. We work very closely with our carrier partners in the resolution and remediation of customer complaints and put corrective action plans in place within our distribution channels if and when we see patterns of inappropriate behavior. We have not, however, seen evidence that the way our brokers and agents are compensated has caused an increase in customer complaints. It is important to keep in mind that it is in each and every agent's personal interest to ensure their clients are enrolled in the best plan for their needs. They value the relationships they have with their clients, the MA beneficiaries, and do not want them complaining about the service they receive.

3. Expansion of "compensation" definition to include travel reimbursements and other administrative fees (42 C.F.R. 422.2274 (a)

We're also concerned the proposed restrictions on reimbursement for agent and broker expenses will cause undue harm to independent agents and brokers, particularly the smaller businesses, and will ultimately harm beneficiaries. The definition of "Compensation" in the proposal would limit the amount of non-

commission or “add-on” payments, as characterized in the preamble, that brokers and agents can receive. While we understand CMS is seeking to ensure agents and brokers aren’t inappropriately incentivized in the sales process, it is difficult for us to understand why CMS would include expense reimbursements, for travel and other expenses, in the definition of Compensation, as we wouldn’t deem expense reimbursements to be compensation, since the payment is being made to reimburse agents and brokers for expenses they’ve already incurred on behalf of the carriers they support. It strikes us that in trying to address what we believe to be an isolated example of expense reimbursement abuse cited in the preamble, CMS is being overly inclusive in the types of payments that brokers and agents may receive that will be deemed compensation and subject to the $31 per enrollment cap.

We do not believe legitimate expense reimbursements influence agents and brokers to sell one carrier’s product over another, and we trust that brokers and agents will continue to be able to be reimbursed for their actual expenses when they are engaged in legitimate marketing activity and have verifiable receipts for those expenses. We encourage CMS to remove expense reimbursements from the new definition of Compensation to allow brokers and agents to continue to be reimbursed for legitimate expenses without being subject to a per enrollment cap. We also encourage CMS to clarify that if any broker or agent is unjustly enriched through any fraudulent expense reimbursement, they will be subject to disciplinary action. This approach would allow CMS to achieve its regulatory purpose of ensuring agents and brokers don’t abuse the expense reimbursement process while allowing agents and brokers to be reimbursed for their legitimate expenses without a $31 per enrollment cap.

We are also concerned the $31 cap per enrollment for administrative payments will not allow agents and brokers to receive payment for additional services and other expenses that they should be entitled to as part of the enrollment process. We believe the rule should permit agents and brokers to receive reasonable compensation and reimbursement for services and expenses, such as, health risk assessments, licensing and training costs, and technology fees, to the extent the services or expenses are legitimate and paid at fair market value. We would ask CMS to further study this issue to develop a final cap for these payments.

Conclusion

As is evident from the commentary we've provided herein, we strongly believe that FMOs play a critical role in the sales, distribution, and ongoing support of MA and PDP products and we don't think CMS should issue regulations that impact our ability to provide services that enhance the effectiveness and efficiency of the MA and PDP sales process. Our dedication to an ethical marketplace and our desire to help ensure independent brokers and agents have the tools they need to recommend the best products for their clients drive us to deliver a leading service experience. We also highly value the trust that our carrier partners put in us to supervise and train the brokers and agents that sell their products, and we work closely with each of them to ensure the integrity of the health insurance marketplace.

As we reflect on CMS' rule proposal related to the 2025 AEP, we want to ensure that CMS understands the value that AmeriLife and other similarly situated FMOs bring to the distribution of MA and PDP products and the objectivity that is built into our business and sales processes. We are incredibly aligned with the purpose that CMS states is the motivation for the rule proposal, and we work tirelessly to help ensure beneficiaries purchase the product that is in their best interest. However, we do not believe the manner in which CMS is trying to ensure its regulatory purpose, by addressing what we see as compensation anomalies, is the way to ensure that brokers and agents are not incented to sell one carrier's plan over another due to their personal considerations, as opposed to the best interests of the consumer. Given the industry confusion created by the ambiguity of the language in the proposed rule, we ask that CMS either 1) clearly exclude FMOs from the final rule and consider adopting the other regulatory suggestions we've made throughout this letter to preserve what is working well in the current MA and PDP distribution process and prevent the unintended consequences we have outlined, or 2) defer the effectiveness of this rule proposal to a later cycle – and take time to further engage with the critical stakeholders in the ecosystem before finalizing a rule of such significant impact. We appreciate the opportunity to comment on this proposal and are eager to discuss any aspect of this letter with CMS representatives.

Respectfully submitted,

Scott Perry

CEO, AmeriLife