

Congress of the United States

Washington, DC 20515

October 29, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

As Medicare enrollment season begins, we are writing to express our concerns on ongoing problems with Medicare Advantage (MA) that seem to be getting worse. We are concerned that in many instances MA plans are failing to deliver, compromising timely access to care and undermining the ability of seniors and Americans with disabilities to purchase the coverage that's right for them. Recent Centers for Medicare & Medicaid Services (CMS) efforts have made some improvements for the more than 32 million people who rely on MA, including clarifying when prior authorizations can be used, strengthening marketing regulations, improving coverage for behavioral health services, and enhancing culturally-competent care.¹ However, we continue to hear alarming reports from seniors and their families, beneficiary advocates, and health care providers that MA plans are falling short, and finding a good plan is too difficult.

Congress created the MA program to provide seniors and people with disabilities with private sector plan options that could offer care coordination and extra benefits. People with Medicare should be able to benefit from an array of plan choices that they can easily comprehend, with guaranteed, timely access to the medical care they need. We are concerned that MA plans are failing to deliver for seniors and Americans with disabilities on these critical goals.

First, MA plan use of prior authorization has skyrocketed – reaching 46 million requests in 2022 – burdening health care providers and delaying care.² Prior authorization – which some enrollees are calling “deny first” – is a problem across multiple procedures, including for enrollees who need post-acute care.³ At the heart of the problem is that plans are not following even the modest

¹ 2024 Medicare Advantage and Part D Final Rule (CMS-4201-F) 88 Fed Reg 22120.

² Biniek et al, Use of Prior Authorization in Medicare Advantage Exceeded 46 Million Requests in 2022, KFF, August 8, 2024. Available at: <https://www.kff.org/medicare/issue-brief/use-of-prior-authorization-in-medicare-advantage-exceeded-46-million-requests-in-2022/>

³ Majority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Refusal of Recovery: How Medicare Advantage Insurers Have Denied Patients Access to Post-Acute Care, Oct 17, 2024. Available at: <https://www.hsgac.senate.gov/wp-content/uploads/2024.10.17-PSI-Majority-Staff-Report-on-Medicare-Advantage.pdf>

rules CMS has put into place. Recent news reports and a Congressional investigation raise serious concerns around how insurers are targeting certain types of care, and their reliance on algorithms and artificial intelligence (AI) tools to make coverage determinations. Overuse of prior authorization is not only harmful to patients, it hinders health care providers' ability to offer best in class service. CMS should require plans to make public how often these tools are being used by individual MA plans, for which types of care, denial and appeal rates, and which vendors, algorithm, or AI tool is used. CMS must also have an understanding of the underlying algorithm's data and potential biases; MA plans should disclose to CMS the technology and underlying algorithmic assumptions used to make decisions about care. CMS should conduct greater oversight of plans with high rates of prior authorization and those that are inventing new strategies (i.e., concurrent reviews, pre-payment audits, payment reviews, and payment integrity administrative reviews) to delay or deny care and decrease payments to providers. Plans that are using these tools inappropriately to delay and deny medically necessary care should be held accountable to the full extent of the law.

Second, MA insurers continue to bait and switch beneficiaries and taxpayers in their marketing. Seniors, people with disabilities, and their families need to have clear and correct information about MA and Medigap plan choices so that they can choose the right plan for their situation. MA plan advertisements too often gloss over information about the core Medicare benefits in favor of supplemental benefits like gym memberships and flex cards. For example, a key piece of any person's plan choice is whether their preferred providers are in-network. Yet, a Senate Finance secret shopper investigation found that more than 80 percent of the listed, in-network, mental health providers in a sample of MA plans were "ghosts," as they were either unreachable, not accepting new patients, or not in-network.⁴ MA plan provider directories should be an accurate representation of the plan's network. To support consumer decision making, accurate directories should be available through the Medicare Plan Finder. Further, CMS should ensure agents and brokers educate seniors and people with disabilities about basic Medicare enrollment rules, including Medigap guaranteed issue rights.

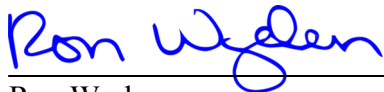
Third, with more than \$6 billion in MA plan spending on commissions and marketing, brokers are under pressure to churn through appointments as quickly as possible. The demand for volume means brokers are under pressure to focus on only a few plans and may not examine the full range of options. We hear that MA marketers are targeting people enrolled in both Medicare and Medicaid and trying to entice low-income Medicare beneficiaries with grocery benefits and flex cards – often without regard to core medical coverage or access to providers. For seniors and people with disabilities, enrolling in a plan that does not meet their health needs can put them at serious risk.⁵ CMS must do more to ensure seniors and people with disabilities understand their plan choices by ensuring marketing and plan communication materials are clear, appeals and

⁴ U.S. Senate Committee on Finance, Majority Study Findings: Medicare Advantage Plan Directors Haunted by Ghost Networks, May 2023. Retrieved from: <https://www.finance.senate.gov/imo/media/doc/050323%20Ghost%20Network%20Hearing%20-%20Secret%20Shopper%20Study%20Report.pdf>


grievance processes are explained, broker compensation structures promote a level playing field between plans and knowledgeable agents, and an MA plan's star rating for complaints about the health plan should not be graded on a curve. The foundation of this work must start with required reporting of what MA plans are spending on marketing and commissions, which companies (and those companies' subcontractors) are receiving those payments, and how those payments are structured. We must also direct more resources to the State Health Insurance Assistance Programs (SHIPs) that provide unbiased support, helping Medicare beneficiaries navigate the program and enrollment and unexpected denials.

We call on CMS to use every regulatory, oversight, and enforcement tool at the agency's disposal to rein in rampant misuse of prior authorization, simplify the experience of choosing a Medicare plan, and put an end to rampant marketing abuses. Further, we welcome input from CMS on resources and authorities the agency needs to address these concerns. We stand ready to work with you to strengthen the MA program to ensure that seniors and people with disabilities are receiving the care they need. As we look to the next Congress and Administration, we ask that you provide our staff a briefing on these issues, including CMS' audits and oversight work in 2024 and how CMS plans to rigorously enforce its regulations, by December 15, 2024.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Frank Pallone, Jr.
Ranking Member
House Committee on Energy
and Commerce



Richard E. Neal
Member of Congress

5 U.S. Senate Committee on Finance, Deceptive Marketing Practices Flourish in the Medicare Advantage Program: A Report by the Majority Staff of the US Senate Committee on Finance, November 2022. Retrieved from: <https://www.finance.senate.gov/imo/media/doc/Deceptive%20Marketing%20Practices%20Flourish%20in%20Medicare%20Advantage.pdf>