

March 27, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Becerra and Administrator Brooks-LaSure,

I write today to bring your attention to new information revealing that seniors and people with disabilities enrolled in Traditional Medicare (TM) are paying higher premiums because of the tricks that Medicare Advantage (MA) plans use to squeeze billions of extra dollars out of the Medicare program.¹ Specifically, these new findings from economists and health policy experts revealed that Medicare overpayments to MA plans will ultimately cost Medicare beneficiaries \$145 billion in increased premiums over the next eight years.² Approximately 45 percent of that amount, or \$65 billion, will be paid by enrollees in TM, who do not receive any of the supplemental benefits or supposed efficiencies in MA,³ yet are responsible for subsidizing these overpayments to private insurance companies.⁴

The Centers for Medicare and Medicaid Services (CMS) is in the final stages of preparing the Calendar Year 2024 Advance Notice of Methodological Changes for MA Capitation Rates and Part C and Part D Payment Policies (the Advance Notice).⁵ These proposed changes would modernize the MA risk adjustment model, limiting future overpayments to MA plans. I support these efforts, which are an important step towards addressing private insurers' long history of

¹ Letter to Senator Warren from Donald Berwick, Josh Gordon, Richard J. Gilfillan, and Rick Kronick, March 24, 2023, <https://www.warren.senate.gov/download/warren-letter-rgrk-032423-clean-final>.

² *Id.*

³ Tweet thread from Paul Van de Water, March 22, 2023, <https://twitter.com/PaulNVandeWater/status/1638560253259452416?s=20>; Government Accountability Office, "Medicare Advantage: Plans Generally Offered Some Supplemental Benefits, but CMS Has Limited Data on Utilization," January 31, 2023, <https://www.gao.gov/products/gao-23-105527>.

⁴ Letter to Senator Warren from Donald Berwick, Josh Gordon, Richard J. Gilfillan, and Rick Kronick, March 24, 2023, <https://www.warren.senate.gov/download/warren-letter-rgrk-032423-clean-final>.

⁵ Centers for Medicare and Medicaid Services, "Advance Notice of Methodological Changes to Calendar Year (CY) 2024 for Medicare Advantage (MA) Capitation Rates and Part C and D Payment Policies," February 1 2023, <https://www.cms.gov/files/document/2024-advance-notice.pdf>.

exploiting the government out of billions of dollars,⁶ and which we now know would help protect the solvency of the Medicare program and reduce health care costs for seniors, including those enrolled in TM.

The Medicare Payment Advisory Commission (MedPAC), a nonpartisan legislative agency, found that excess payments to private insurance companies in MA have cost the government nearly \$124 billion since 2007⁷ and further estimated that MA plans will receive \$23 billion in excess payments due to coding intensity for 2023 alone.⁸ Yet other experts have put those figures even higher, suggesting the differences due to coding intensity between MA and TM will result in \$600 billion in overpayments to MA plans between 2023 and 2031.⁹ The Advance Notice will begin to address these overpayments by making a series of adjustments and technical updates to CMS's payment methodology to ensure payments to MA plans more accurately reflect the cost of care.¹⁰

A group of four health care experts recently sent a letter to my office describing how overpayments to MA plans drive higher costs for all Part B beneficiaries and taxpayers. According to this letter:¹¹

The Part B premium is set by law to equal 25% of all Medicare expenditures for Part B services. These include all the Part B services TM beneficiaries receive and the portion of MA spending that is allocated to Part B. Medicare pays a fixed amount called capitation of about \$13,000 per beneficiary per year to MA Plans. Medicare's actuaries apportion that into Parts A and B expenditures each year. Over the period of 2023 to 2031, they project that about 60% of expenditures will be apportioned to Part B.¹²

⁶ See e.g., Fierce Healthcare, "Audits—hidden until now—reveal millions in Medicare Advantage overcharges," Fred Schulte and Holly Hacker, November 21, 2022, <https://www.fiercehealthcare.com/payers/audits-hidden-until-now-reveal-millions-medicare-advantage-overcharges>; U.S. Department of Health and Human Services, Office of Inspector General, "Some Medicare Advantage Companies Leveraged Chart Reviews and Health Risk Assessments To Disproportionately Drive Payments," Suzanne Murrin, September 2021, <https://oig.hhs.gov/oei/reports/OEI-03-17-00474.pdf>; U.S. Department of Justice, "United States Files Civil Fraud Lawsuit Against Cigna For Artificially Inflating Its Medicare Advantage Payments," press release, October 17, 2022, <https://www.justice.gov/usao-sdny/pr/united-states-files-civil-fraud-lawsuit-against-cigna-artificially-inflating-its>.

⁷ Medicare Payment Advisory Commission, "The Medicare Advantage program: Status report," Luis Serna and Andy Johnson, January 12, 2023, p. 13, <https://www.medpac.gov/wp-content/uploads/2023/01/MedPAC-MA-status-report-Jan-2023.pdf>.

⁸ Center on Budget and Policy Priorities, "Medicare Advantage Payment Changes Would Have Little or No Effect on Beneficiaries," Paul N. Van de Water, March 6, 2023, <https://www.cbpp.org/blog/medicare-advantage-payment-changes-would-have-little-or-no-effect-on-beneficiaries>.

⁹ SSRN, "Industry-Wide and Sponsor-Specific Estimates of Medicare Advantage Coding Intensity," Richard Kronick and F. Michael Chua, November 11, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3959446.

¹⁰ Centers for Medicare and Medicaid Services, "Advance Notice of Methodological Changes for Calendar Year (CY) 2024 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies," February 1, 2023, <https://www.cms.gov/files/document/2024-advance-notice.pdf>.

¹¹ Letter to Senator Warren from Donald Berwick, Josh Gordon, Richard J. Gilfillan, and Rick Kronick, March 24, 2023, <https://www.warren.senate.gov/download/warren-letter-rgrk-032423-clean-final>.

¹² The Boards of Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, "The 2022 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds," June 2, 2022, p. 161, <https://www.cms.gov/files/document/2022-medicare-trustees-report.pdf>.

Therefore, roughly 60% of every dollar paid to MA Plans will be included in the calculation of the Part B premium for all beneficiaries.

MedPAC has noted three main reasons Medicare pays more for MA members than it would if those beneficiaries were in TM: first, because CMS does not adequately adjust for patterns of differential coding between MA and TM, resulting in higher risk scores in MA; second, because the MA quality bonus program results in additional payments to MA plans; and third, because the benchmarks in counties with relatively low levels of fee-for-service (FFS) spending are set, by statute, above average FFS spending levels.

[T]he difference in coding patterns between TM and MA plans would create a total of \$600 billion in overpayments over the period from 2023 to 2031. This estimate would likely be higher if redone today because the rate of coding increase has accelerated in the past several years. 60% of this increased spending, \$360 billion, will be included in Part B expenditures. 75% of that cost, \$270 billion, will become the responsibility of taxpayers. 25%, or \$90 billion, will be paid for by Medicare beneficiaries through increased Part B premiums.

Without changes to the way Medicare pays MA plans like those proposed in the 2024 MA Advance Notice by CMS, over the next 8 years MA plans will be paid approximately \$960 billion, almost \$1 trillion, more than Medicare would pay if beneficiaries remained in TM. Taxpayers will be responsible for 85% of this amount. Medicare beneficiaries will pay for 15% or \$145 billion of this through increased Part B premiums. This constitutes a major transfer of wealth from the Nation's seniors to the owners of MA plans who will then decide how it will be used by their firms. 45%, or \$65 billion, of this will be paid by TM beneficiaries.

I have repeatedly fought against the insurance industry's efforts to extract billions of dollars out of the Medicare program,¹³ and the attached letter confirms the need for CMS to address these practices. In fact, CMS should go further to strengthen the integrity of the MA program and protect beneficiaries and taxpayers, but finalizing the Advance Notice is a necessary first step.

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator

¹³ Office of U.S. Senator Elizabeth Warren, "Senators Warren, Merkley Criticize Insurance Companies for Medicare Advantage Scare Tactics, 'Outsize Profits,' 'Exorbitant' Executive Pay Packages," press release, March 23, 2023, <https://www.warren.senate.gov/oversight/letters/senators-warren-merkley-criticize-insurance-companies-for-medicare-advantage-scare-tactics-outsize-profits-exorbitant-executive-pay-packages>.