

Congress of the United States

Washington, DC 20515

December 16, 2024

Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

We write to strongly urge you to limit waste, fraud, and abuse by private, for-profit insurers participating in Medicare Advantage (MA) by continuing and expanding upon your proposal to update the risk adjustment model used to calculate MA payment rates. The nonpartisan Medicare Payment Advisory Commission (MedPAC) estimates that private insurers in MA will overcharge taxpayers \$83 billion this year alone—resulting in a \$13 billion spike in Medicare Part B premiums and continued pressure on the long-term financial security of Medicare and its promise of comprehensive coverage.¹ Without your swift action, the situation will only worsen as President-elect Trump and Congressional Republicans prepare multi-trillion-dollar legislation to provide even greater tax cuts to multinational corporations and the very wealthiest few at the expense of social safety net programs, including Medicare.² Meanwhile, Dr. Mehmet Oz, President-elect Trump’s nominee for CMS Administrator, has promoted the further expansion of Medicare Advantage and the elimination of Traditional Medicare, which would result in further denials of care and higher costs for taxpayers and patients.³ Accordingly, we strongly urge you to issue the Calendar Year 2026 Medicare Advantage Capitation Rates and Part C and Part D Payment Policies this month, and that it include the final phase-in of your updates to the MA risk adjustment model⁴ and additional action to rein in overpayments to private insurers in MA, as recommended by MedPAC.⁵

In March 2023, CMS published the CY 2024 MA payment rule, which finalized technical updates to the program’s payment methodology and changes to its risk adjustment model to ensure Medicare payments more accurately reflect what it costs to care for Medicare

¹ Medicare Payment Advisory Commission, "Report to the Congress: Medicare Payment Policy," March 2024, p. 396, https://www.medpac.gov/wp-content/uploads/2024/03/Mar24_Ch12_MedPAC_Report_To_Congress_SEC-1.pdf; Center for Medicare Advocacy, "Medicare Advantage Industry Blames 2025 Service Cut-Backs on Policy Changes That Hold Them More Accountable," October 3, 2024, <https://medicareadvocacy.org/medicare-advantage-2025-service-cut-backs/#:~:text=According%20to%20MedPAC%2C%20these%20higher,not%20enrolled%20in%20MA%20plans.>

² The Hill, "House Republican eyes Medicare, Social Security for DOGE cuts," Aris Folley, December 9, 2024, <https://thehill.com/business/budget/5030214-republican-alford-medicare-social-security-doge/>.

³ Letter from Senator Warren to Dr. Mehmet Oz, December 10, 2024, https://www.warren.senate.gov/imo/media/doc/warren_letter_to_droz.pdf.

⁴ CMS.gov, "2025 Medicare Advantage and Part D Advance Notice Fact Sheet," January 31, 2024, <https://www.cms.gov/newsroom/fact-sheets/2025-medicare-advantage-and-part-d-advance-notice-fact-sheet#:~:text=CMS%20finalized%20an%20updated%20Part,the%20updated%20risk%20adjustment%20model.>

⁵ Medicare Payment Advisory Commission, "Report to the Congress: Medicare Payment Policy," March 2024, <https://www.medpac.gov/document/march-2024-report-to-the-congress-medicare-payment-policy/>; Applied Policy, "MedPAC Releases March 2024 Report to Congress," Emma Hammer, March 25, 2024, <https://www.appliedpolicy.com/medpac-releases-march-2024-report-to-congress/>.

beneficiaries.⁶ This included identifying and eliminating overpayments associated with approximately 2,000 diagnosis codes, “including 75 that appear to be the subject of widespread manipulation”⁷ by private insurers in MA. We were deeply disappointed by CMS’s decision to delay these much-needed reforms by adopting a phase in approach over a three-year period, starting in CY 2024 and ending in CY 2026.⁸

Most overpayments are the result of “upcoding,” the strategy in which private insurers add unsupported diagnosis codes to their MA enrollees’ medical charts to secure higher payments from taxpayers—even if enrollees receive no treatment for those conditions.⁹ Upcoding has resulted in taxpayers spending 22% more on MA enrollees than if they had received coverage through Traditional Medicare, which has no incentive to make consumers appear sicker than they are.¹⁰ In total, MedPAC estimates that upcoding by private insurers in MA will cost taxpayers \$54 billion in 2024 alone.¹¹

CMS’s proposed changes to the risk adjustment model, if fully phased in as scheduled, will help limit some of the most egregious forms of upcoding. Even as these changes have been phased in, the MA program remains highly profitable for private insurers, and MA plan offerings have remained stable.¹² We urge you to implement the final phase of changes to the coding system and take additional action to limit the waste of taxpayer dollars. Most critically, you should implement MedPAC’s recommendation to use the Demographic Estimate of Coding Intensity (DECI) method to calculate risk adjustment payments.¹³ This would ensure more accurate plan payments that reflect the true cost of care for enrollees.

MA insurers and their promoters often mislabel your actions and stronger proposals as “cuts to Medicare” that threaten consumers’ access to care.¹⁴ In reality, payments to private insurers in

⁶ Centers for Medicare & Medicaid Services, “Announcement of Calendar Year (CY) 2024 Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies,” March 31, 2023, <https://www.cms.gov/files/document/2024-announcement-pdf.pdf>.

⁷ The New York Times, “Medicare Delays a Full Crackdown on Private Health Plans,” Margot Sanger-Katz and Reed Abelson, March 31, 2023, <https://www.nytimes.com/2023/03/31/health/medicare-overbilling-insurance.html?searchResultPosition=1>.

⁸ *Id.*

⁹ The Wall Street Journal, “Insurers Pocketed \$50 Billion From Medicare for Diseases No Doctor Treated,” Christopher Weaver et al., July 8, 2024, <https://www.wsj.com/health/healthcare/medicare-health-insurance-diagnosis-payments-b4d99a5d>; Letter from Senator Warren to Dr. Mehmet Oz, December 10, 2024, https://www.warren.senate.gov/imo/media/doc/warren_letter_to_droz.pdf.

¹⁰ USC Schaeffer, “Medicare Advantage Costs Taxpayers 22% More Per Enrollee. Here’s How Payment Reform Could Help Close The Gap,” Grace McCormack and Erin Duffy, November 26, 2024, <https://healthpolicy.usc.edu/article/medicare-advantage-overpayments-reform-the-conversation/>.

¹¹ Medicare Payment Advisory Committee (MedPAC), “The Medicare Advantage program: Status report,” Stuart Hammond, Andy Johnson, and Luis Serna, January 12, 2024, p. 17, <https://www.medpac.gov/wp-content/uploads/2023/10/MedPAC-MA-status-report-Jan-2024.pdf>.

¹² CMS.gov, “Medicare Advantage and Medicare Prescription Drug Programs to Remain Stable as CMS Implements Improvements to the Programs in 2025,” September 27, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicare-advantage-and-medicare-prescription-drug-programs-remain-stable-cms-implements-improvements#:~:text=Medicare%20Advantage%20Remains%20Stable%20with,and%20benefit%20offerings%20in%202025>.

¹³ Medicare Payment Advisory Commission, “Report to the Congress: Medicare Payment Policy,” March 2024, https://www.medpac.gov/wp-content/uploads/2024/03/Mar24_Ch12_MedPAC_Report_To_Congress_SEC-1.pdf; Applied Policy, “MedPAC Releases March 2024 Report to Congress,” Emma Hammer, March 25, 2024, <https://www.appliedpolicy.com/medpac-releases-march-2024-report-to-congress/>.

¹⁴ The Washington Times, “NRCC whacks Dems on Medicare in new hard-hitting ad that ticks off nation’s economic woes,” Mallory Wilson, April 23, 2024, <https://www.washingtontimes.com/news/2024/apr/23/house-republicans-whack->

MA have continued to balloon each year, totaling up to \$600 billion in 2024,¹⁵ while these same insurers have been found to routinely defraud taxpayers,¹⁶ obstruct access to care,¹⁷ squeeze independent physician practices,¹⁸ and use deceptive marketing tactics to lure seniors into their plans.¹⁹ It is your duty to protect taxpayer dollars from waste and abuse and the preservation of these funds will protect the promise of Medicare for future generations by stabilizing the Medicare Trust Fund, which is currently projected to be depleted in 2036.

We appreciate the very narrow steps you have previously taken to rein in the tens of billions of taxpayer dollars wasted in overpayments to private insurers in MA each year. To further protect taxpayers and consumers, we urge you to fully implement scheduled risk adjustment changes in the CY 2026 payment rule this month and strengthen this proposal to include adoption of the DECI risk adjustment methodology and other reforms recommended by MedPAC. Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Lloyd Doggett
Member of Congress

[democrats-on-cuts-to-medic/](#); American for Prosperity, “Biden administration cutting Medicare benefits for seniors,” April 4, 2024, <https://americansforprosperity.org/press-release/biden-administration-cutting-medicare-benefits-for-seniors/>; Better Medicare Alliance, “BMA Statement on CMS Proposal to Cut Medicare Advantage,” February 2, 2023, <https://bettermedicarealliance.org/news/bma-statement-on-cms-proposal-to-cut-medicare-advantage/>.

¹⁵ CMS.gov, “CMS Finalizes Payment Updates for 2025 Medicare Advantage and Medicare Part D Programs,” April 1, 2024, <https://www.cms.gov/newsroom/press-releases/cms-finalizes-payment-updates-2025-medicare-advantage-and-medicare-part-d-programs>.

¹⁶ The Wall Street Journal, “Insurers Pocketed \$50 Billion From Medicare for Diseases No Doctor Treated,” Christopher Weaver et al., July 8, 2024, <https://www.wsj.com/health/healthcare/medicare-health-insurance-diagnosis-payments-b4d99a5d>.

¹⁷ HHS-OIG, “Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care,” April 27, 2022, <https://oig.hhs.gov/reports/all/2022/some-medicare-advantage-organization-denials-of-prior-authorization-requests-raise-concerns-about-beneficiary-access-to-medically-necessary-care/>.

¹⁸ Letter from Senator Wyden to CMS Administrator Brooks-LaSure, October 29, 2024, https://www.finance.senate.gov/imo/media/doc/102924_wyden_neal_pallone_letter_to_cms_about_ma.pdf; STAT News, “UnitedHealth pays its own physician groups considerably more than others, driving up consumer costs and its profits,” Bob Herman, Casey Ross, Lizzy Lawrence, and Tara Bannow, November 25, 2024, <https://www.statnews.com/2024/11/25/unitedhealth-higher-payments-optum-providers-converts-expenses-to-profits/>.

¹⁹ *Id.*