April 16, 2024

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

Dear Secretary Becerra:

On behalf of the undersigned organizations, representing people with Medicare, families, and providers, we applaud the administration for taking important steps in the final CY2025 Medicare Advantage (MA) Rate Announcement to hold MA plans and organizations accountable to delivering the high quality, affordable, and equitable care that people who rely on Medicare need and deserve.

Too often, MA organizations and plans engage in harmful business practices and corporate abuses that negatively impact people with Medicare and other taxpayers. These practices include aggressive care denials and prior authorization restrictions that do not correspond with what is required to be covered under Traditional Medicare[1]; predatory and deceptive marketing schemes to prospective enrollees[2,3]; and systematic upcoding of patient diagnoses that do not reflect the actual care that enrollees are receiving, among other abuses.[4] Taken together, these practices are driving hundreds of billions of dollars in overpayments and raises serious concerns about accountability for MA plans to deliver high-quality, high-value, and equitable care.[5]

**We applaud what the administration has done to begin to rein in harmful MA plan practices to date, including in this final Rate Announcement, and we stand ready to support you as you move to implement these improvements. We also feel strongly that continued abuses in the MA program warrant that the administration go even further towards addressing unscrupulous business practices of MA plans, and we want to serve as key partners in informing future efforts.** By comprehensively addressing these abuses, we can ensure that tens of millions of older adults will have greater access to high-quality and affordable health care.

As you know, systematic upcoding is when an MA plan or organization reduces the accuracy of MA payments by making their MA enrollee population appear sicker and costlier than they really are.[6] This occurs despite the fact that MA enrollees actually tend to be healthier than patients in Traditional Medicare.[7] MA plans have gone so far as to upcode and assign erroneous patient diagnoses – through sham chart reviews and health risk assessments (HRAs) – that are not medically supported (i.e., not supported by the patient's medical record) or do not result in any additional medically necessary treatment or care.[8]

Ultimately, these upcoding abuses lead to billions of dollars of overpayments, wasting taxpayer dollars and putting Medicare's long term financial position at risk.[9] They also hurt the health and financial well-being of all those who rely on Medicare by driving up enrollee out-of-pocket costs and Part B premiums and, importantly, undermining the extent to which the MA payment system can hold plans accountable to delivering high quality and equitable care.[10] Compounding these concerns that MA plans are not truly held accountable to delivering high quality and equitable care is a lack of meaningful transparency and oversight of MA plans, an ineffective MA quality program, and growing evidence of adverse selection.[11,12,13]

In the final CY2025 Rate Announcement, the Centers for Medicare & Medicaid Services (CMS) finalized its proposal to continue implementing an updated risk adjustment model (i.e., the 2024 CMS-HCC Risk Adjustment Model) that will help promote more accurate payments to MA organizations and plans, ensuring those payments truly reflect and account for the expected costs of each enrolled patient. This is an important step toward limiting MA plans' ability to upcode and bill for sham diagnoses that are often never even treated.

Yet we believe more needs to be done to rein in the harmful practices of MA plans, particularly around systematic upcoding and overpayments. For instance, we are disappointed CMS chose to only apply a coding pattern adjustment at the statutory minimum, despite having clear authority to go further.[14] Combined with the relatively modest improvements to the risk adjustment model, these coding adjustments do not fully address nor rein in the differences in MA coding intensity and upcoding relative to Traditional Medicare, nor does it mitigate the resulting harms to those who rely on Medicare and taxpayers.

**Therefore, we recommend CMS enact the following changes in future rulemaking:**

- Apply a higher coding adjustment factor above and beyond what is minimally required in statute to fully account for intensive coding by MA plans. We recommend using a tiered approach that targets MA plans who engage in upcoding to the greatest extent in order to remove their unfair advantage as compared to other MA plans.
- Exclude information exclusively collected via in-home health risk assessments (HRAs) or chart reviews as a source of diagnoses for MA risk adjustment scores and payments, as they are easily abused and represent a significant driver of coding intensity and upcoding as noted by MedPAC and HHS OIG.[15]
- Use two years of traditional Medicare and MA diagnostic data for calculating MA risk-adjusted payments to avoid allowing erroneous diagnoses, such as those due to errors or inappropriate coding from one particular year, to drive upcoding and overpayments in MA.[16]

We applaud CMS and the administration for taking meaningful steps towards reining in harmful business practices and corporate abuses in the MA program in this final rate announcement. As the MA Program continues to experience record enrollment and now provides health care coverage to over half of all Medicare beneficiaries, we look forward to continuing to partner with the administration, and specifically with HHS and CMS, on how to further ensure that those that rely on MA receive the high-quality, affordable, and equitable care they deserve.

Sincerely,

Families USA
Center for Medicare Advocacy
Justice in Aging

AgeOptions
AIDS Action Baltimore
Allergy & Asthma Network
Alliance For Retired Americans
American Academy of Pediatrics- Nebraska Chapter
Asian Resources, Inc.
Autistic Women & Nonbinary Network
Be A Hero
Breast Cancer Action
Bruno-Smithfield Community Health Centers
Center for Elder Law and Justice
Center For Health and Democracy
Christian Council of Delmarva
Colorado Consumer Health Initiative
Central Virginia Health Services
Democratic Disability Caucus of Florida
Global Alliance for Behavioral Health and Social Justice
Grainpro Inc.
Health Action New Mexico
Hennepin Healthcare - HCMC
Iowa Citizen Action Network
Konocti Senior Support, Inc.
Labor Campaign for Single Payer
Lighthouse Community Development Corporation
Long Term Care Community Coalition
Lupus and Allied Diseases Association, Inc.
Maternal and Child Health Access
Medicare Rights Center
National Adult Day Services Association (NADSA)
National Association of Social Workers (NASW)

National Committee to Preserve Social Security and Medicare
New Jersey Association of Mental Health and Addiction Agencies, Inc.
New Jersey Citizen Action
One Health Resource
Project H.E.L.P USA
South Carolina Appleseed Legal Justice Center
Transgender Awareness Alliance
Tennessee Healthcare Campaign
Texas Central Hemophilia Association
The Office of the Health Care Advocate - Vermont Legal Aid
Triage Cancer
Urban Justice Center
West Virginia Citizen Action Group
Westside Family Health Center

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[1] https://oig.hhs.gov/oei/reports/OEI-09-18-00260.asp?hero=mao-report-04-28-2022

[2] Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency, 87 Fed. Reg. 27704, 27704-27902 (May 9, 2022). "In 2020, we received a total of 15,497 complaints related to marketing. In 2021, excluding December, the total was 39,617."

[3] US Senate Committee on Finance (Majority Staff), Deceptive Marketing Practices Flourish in Medicare Advantage.
https://www.finance.senate.gov/imo/media/doc/Deceptive%20Marketing%20Practices%20Flourish%20in%20Med icare%20Advantage.pdf

[4] HHS OIG, Some Medicare Advantage Companies Leveraged Chart Reviews and Health Risk Assessments to Disproportionately Drive Payments, September 20, 2021. OEI-03-17-00474.
https://www.oig.hhs.gov/oei/reports/OEI-03-17-00474.asp

[5] See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023; See Chapter 4, MedPAC, Report to the Congress: Medicare and the Health Care Delivery System, June 2023; MedPAC Regulatory Comment on Advance Notice of Methodological Changes for Calendar Year (CY) 2024 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies, March 1, 2023. https://www.medpac.gov/wp-content/uploads/2023/03/Mar2023_MA_C_AND_D_CY-2024_MedPAC_COMMENT_v2_SEC.pdf

[6] Ibid.

[7] See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023; See Chapter 4, MedPAC, Report to the Congress: Medicare and the Health Care Delivery System, June 2023.

[8] HHS OIG, *Some Medicare Advantage Companies Leveraged Chart Reviews and Health Risk Assessments to Disproportionately Drive Payments,* September 20, 2021. OEI-03-17-00474. https://www.oig.hhs.gov/oei/reports/OEI-03-17-00474.asp; See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023.

[9] See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023; Juliette Cubanski & Tricia Neuman, *FAQs on Medicare Financing and Trust Fund Solvency*, June 17, 2022. https://www.kff.org/medicare/issue-brief/faqs-on-medicare-financing-and-trust-fund-solvency/; Boards of

Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. 2022. 2022 annual report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. Washington, DC: Boards of Trustees.

[10] See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023; See Chapter 4, MedPAC, Report to the Congress: Medicare and the Health Care Delivery System, June 2023.; MedPAC, Regulatory Comment on Advance Notice of Methodological Changes for Calendar Year (CY) 2024 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies, March 1, 2023. https://www.medpac.gov/wp-content/uploads/2023/03/Mar2023_MA_C_AND_D_CY-2024_MedPAC_COMMENT_v2_SEC.pdf

[11] Government Accountability Office, *Medicare Advantage: Plans Generally Offered Some Supplemental Benefits, but CMS Has Limited Data on Utilization,* January 2023. https://www.gao.gov/assets/gao-23-105527.pdf; Jeannie Fuglesten Biniek, Meredith Freed, & Tricia Nueman, *Gaps in Medicare Advantage Data Limit Transparency in Plan Performance for Policymakers and Beneficiaries,* Kaiser Family Foundation, April 25, 2023. https://www.kff.org/medicare/issue-brief/gaps-in-medicare-advantage-data-limit-transparency-in-plan-performance-for-policymakers-and-beneficiaries/

[12] Markovitz, A. A., Ayanian, J. Z., Warrier, A., & Ryan, A. M. (2021). Medicare Advantage plan double bonuses drive racial disparity in payments, yield no quality or enrollment improvements. *Health Affairs*, *40*(9), 1411–1419. https://doi.org/10.1377/hlthaff.2021.00349; Markovitz, A. A., Ayanian, J. Z., Sukul, D., & Ryan, A. M. (2021). The Medicare Advantage Quality Bonus program has not improved plan quality. *Health Affairs*, *40*(12), 1918–1925. https://doi.org/10.1377/hlthaff.2021.00606

[13] See Chapter 4, MedPAC, Report to the Congress: Medicare and the Health Care Delivery System, June 2023.

[14] Specifically, we are disappointed CMS chose to only apply the coding pattern adjustment at the minimum 5.9 percent; it is important to note that CMS has the statutory authority to implement a coding pattern adjustment above and beyond the minimally required 5.9 percent, but has never done so. See, Section 1853 (a)(1)(C)(ii) of the Social Security Act [42 U.S.C. 1395w–23(a)(1)(C)(ii)].

[15] HHS OIG, *Some Medicare Advantage Companies Leveraged Chart Reviews and Health Risk Assessments to Disproportionately Drive Payments,* September 20, 2021. OEI-03-17-00474. https://www.oig.hhs.gov/oei/reports/OEI-03-17-00474.asp; See Chapter 12, MedPAC, Report to the Congress: Medicare Payment Policy, March 2016.; See Chapter 11, MedPAC, Report to the Congress: Medicare Payment Policy, March 2023

[16] See Chapter 12, MedPAC, Report to the Congress: Medicare Payment Policy, March 2016