



Medicare Rights Center
Statement for the Record

Submitted to the
U.S. Senate Committee on Finance

Regarding the October 18, 2023, hearing

“Medicare Advantage Annual Enrollment: Cracking Down on Deceptive
Practices and Improving Senior Experiences”

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The Medicare Rights Center (Medicare Rights) appreciates this opportunity to submit a statement for the record on the October 18, 2023, hearing of the U.S. Senate Committee on Finance, titled “Medicare Advantage Annual Enrollment: Cracking Down on Deceptive Practices and Improving Senior Experiences.” Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

Medicare is a vital, life-saving program that protects the health and well-being of over 66 million older adults and people with disabilities.¹ As people join Medicare, and every year afterward, they have choices to make about how they will receive their coverage. A growing number select Medicare Advantage (MA), also known as a Medicare private health plan or Part C. Individual needs, preferences, and priorities typically guide these enrollment choices.

Unfortunately, there are other factors influencing these choices as well, including predatory marketing, widespread confusion, and a lack of sufficient tools and guardrails to ensure coverage choices are informed and optimized.

At Medicare Rights, we frequently hear from beneficiaries who need help understanding their Medicare coverage options and making enrollment decisions. The MA plan landscape is overwhelmingly cluttered. Recent statutory and regulatory changes, such as the elimination of meaningful difference and uniformity requirements, as well as reduced network adequacy standards and booming profits—in part due to MA overpayment—have led to an influx of plans, with single sponsors often offering multiple plans in any given area.²

During open enrollment for 2023, the average beneficiary had 43 different MA plans from which to choose. This is more than double the number in 2018 and does not even include employer-sponsored plans, Special Needs Plans (SNPs), cost plans, or Medicare-Medicaid integrated plans, all of which are additionally available to some beneficiaries,³ or fully capture geographic differences. In 27 counties, more than 75 plans were offered.

Most beneficiaries (60%) had plans available from fewer than 10 companies. In 1,136 counties (accounting for 50% of beneficiaries), at least one company offered 10 or more plans. This is also reflected in the enrollment numbers. Two companies, UnitedHealthcare and Humana, accounted for 46% of MA enrollment in 2022.

Plans can vary on everything from costs to coverage, sometimes in subtle but important ways. For most beneficiaries, this makes close analysis both critical and unattainable. Indeed, identifying and simultaneously comparing each plan deviation, year after year, is a challenging, intimidating, and time-

¹ Centers for Medicare & Medicaid Services, “Access to Health Coverage” (last visited October 31, 2023), <https://www.cms.gov/pillar/expand-access>.

² Medicare Payment Advisory Commission, “Medicare Payment Policy: Report to the Congress,” (March 2022), https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_SEC.pdf.

³ Meredith Freed, et al., “Medicare Advantage 2023 Spotlight: First Look” (November 10, 2022), <https://www.kff.org/medicare/issue-brief/medicare-advantage-2023-spotlight-first-look/>.

consuming task that few people with Medicare perform.⁴ Instead, they may rely on heuristics like where their neighbors or friends get coverage. Worse, they may rely on marketing that is designed to lure them with promises of benefits they may not be eligible for or that may be so limited as to be essentially worthless.

Complex analyses of seemingly endless plan designs may be particularly burdensome for consumers with limited English proficiency, those who have cognitive impairments or other serious health needs, and people with inadequate internet access. Despite the severe consequences of making a poor plan choice—such as high costs, restricted provider access, and delayed care—there are few remedies. If an enrollee makes a mistake, they may be stuck in a plan that does not meet their needs for up to a year, or could be locked into MA indefinitely because of the high cost of Medigap coverage.

In one series of KFF focus groups, consumers reported feeling overwhelmed and inundated by Medicare marketing.⁵ They received unwelcome and unsolicited phone calls from brokers and plan representatives, sometimes with no clear information about who was calling. And they reported that TV ads were often misleading and deceptive, and that it was often unclear whether the government or a private company was behind the ad.

Research shows that marketing by MA plans is a major source of information for many consumers.⁶ Such marketing is not objective; it only touts the benefits of MA, not the tradeoffs, and complaints about misleading marketing are on the rise as TV ads become more prevalent.⁷ This points to the need to extend and improve information access about the pros and cons of Original Medicare and MA to ensure people are getting the full picture.

For example, there are no clear rules about how MA plans and brokers may market supplemental benefits to current or potential enrollees. According to a recent Commonwealth Fund analysis, 24% of those who opted for MA were drawn by the extra benefits.⁸

The KFF and Commonwealth findings echo what we often hear from beneficiaries about the challenges of enrolling in Medicare initially and the complexity of re-evaluating their coverage every year. In our experience, people find Medicare coverage choices overwhelming and are confused about how Medicare works. This includes confusion about the different parts of the program, what is included in an

⁴ See, e.g., Meredith Freed, et al., “More Than Half of All People on Medicare Do Not Compare Their Coverage Options Annually,” Kaiser Family Foundation (October 29, 2020), <https://www.kff.org/medicare/issue-brief/more-than-half-of-all-people-on-medicare-do-not-compare-their-coverage-options-annually/>; Wyatt Korma, et al., “Seven in Ten Medicare Beneficiaries Did Not Compare Plans Past Open Enrollment Period,” Kaiser Family Foundation (October 13, 2021), <https://www.kff.org/medicare/issue-brief/seven-in-ten-medicare-beneficiaries-did-not-compare-plans-during-past-open-enrollment-period/>.

⁵ Meredith Freed, et al., “What Do People with Medicare Think About the Role of Marketing, Shopping for Medicare Options, and Their Coverage?” (September 15, 2023), <https://www.kff.org/medicare/report/what-do-people-with-medicare-think-about-the-role-of-marketing-shopping-for-medicare-options-and-their-coverage/>.

⁶ Faith Leonard, et al., “Traditional Medicare or Medicare Advantage: How Older Americans Choose and Why” (October 17, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/oct/traditional-medicare-or-advantage-how-older-americans-choose>.

⁷ Victoria Knight, “Medicare Advantage has a marketing problem” (September 8, 2022), <https://www.axios.com/2022/09/08/medicare-advantage-marketing-problem>.

⁸ Faith Leonard, et al., “Traditional Medicare or Medicare Advantage: How Older Americans Choose and Why,” (October 17, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/oct/traditional-medicare-or-advantage-how-older-americans-choose>.

MA plan and any supplemental benefits, the tradeoffs of switching to MA, and what the differences are between MA and Medigap or other supplemental coverage.

Confused beneficiaries then may seek help, and research shows that most people who receive help choosing between their coverage options turn to brokers and agents rather than objective sources.⁹ Agents and brokers receive commissions and will be paid more for enrolling people into MA plans than into supplemental coverage like Medigap.¹⁰ This may create an incentive for agents and brokers to steer consumers into MA.

Once in MA, enrollees can encounter unexpected prior authorization and network limitations, as well as higher than anticipated co-pays.¹¹ To ensure people better understand the tradeoffs, we urge better government informational materials and decision-making tools that are complete and unbiased. If information about MA touts the potential for MA to decrease beneficiary costs, it must also alert the consumer to the potential that it will raise costs and the risk of losing access to valued providers. In addition, supplemental benefits need marketing guardrails to ensure any communications about them include information about their limitations. Without such guardrails, nothing prevents supplemental benefits from being used merely or primarily as a sales tool.

Although Medicare Plan Finder has information about specific plans, it is limited, especially when it comes to cost comparisons and supplemental benefits. Plan Finder can also be confusing to use due to the number of plan choices and the complexity of MA and Part D structures. In addition, people are not able to search by network providers. Even outside of Plan Finder, provider directories are wholly inadequate and riddled with errors.

We suggest improving Medicare Plan Finder by integrating plan network data, individual claims history, and more realistic and predictive estimated costs. We also support including more information about supplemental benefits, like coverage and eligibility limits. Medicare Plan Finder must not be a marketing tool for MA plans to bolster enrollment.

We also ask Congress to provide increased funding for State Health Insurance Assistance Programs (SHIPs) like Ohio Senior Health Insurance Information Program (OSHIIP) so ably represented by Christina Reeg. Despite being a primary, trusted source of unbiased enrollment counseling, SHIP funding is unable to keep pace with growing demands, driven by an aging population, MA enrollment increases, and an ever more complex plan selection process.

As always, we also note that many people struggle to enroll in Medicare in the first place. Among the most frequent calls to Medicare Rights' National Helpline are from or on behalf of people trying to

⁹ Faith Leonard, et al., "Traditional Medicare or Medicare Advantage: How Older Americans Choose and Why" (October 17, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/oct/traditional-medicare-or-advantage-how-older-americans-choose>.

¹⁰ Riz Ali & Lesley Hellow, "Agent Commissions in Medicare and the Impact on Beneficiary Choice" (October 12, 2021), <https://www.commonwealthfund.org/blog/2021/agent-commissions-medicare-and-impact-beneficiary-choice>.

¹¹ Meredith Freed, et al., "What Do People with Medicare Think About the Role of Marketing, Shopping for Medicare Options, and Their Coverage?" (September 15, 2023), <https://www.kff.org/medicare/report/what-do-people-with-medicare-think-about-the-role-of-marketing-shopping-for-medicare-options-and-their-coverage/>.

understand their options and navigate enrollment.¹² For many, including those who must actively enroll, this can be a confusing and overwhelming time.

Most people new to Medicare are automatically enrolled because they are receiving Social Security when they become eligible—but a growing number are not.¹³ These individuals must enroll on their own, taking into consideration specific timelines, intricate Medicare rules, and any existing coverage. Mistakes are common and carry serious consequences, including lifelong financial penalties, high out-of-pocket health care costs, disruptions in care continuity, and gaps in coverage.

Conclusion

As MA enrollment, plan numbers, and costs grow,¹⁴ it is increasingly important to ensure the program is working well for enrollees. It is clear there is ample room for reform. MA advertising is misleading and rampant. Plan selection is overly onerous, and official Medicare resources under-utilized. There are too many barriers to care and informed decision-making, and too few options for relief. People with Medicare need stronger consumer protections, more reliable coverage, and tougher plan oversight—without delay.

Thank you for your consideration and leadership. The Medicare Rights Center looks forward to continued collaboration.

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¹² Medicare Rights Center, “Medicare Trends and Recommendations: An Analysis of Call Data from the Medicare Rights Center’s National Helpline, 2020-2021,” (May 2022), <https://www.medicarerights.org/policy-documents/2020-2021-medicare-trends-and-recommendations>.

¹³ See, e.g., Medicare Payment Advisory Commission, “Report to the Congress: Medicare and the Health Care Delivery System,” (June 2019), http://www.medpac.gov/docs/default-source/reports/jun19_medpac_reporttocongress_sec.pdf?sfvrsn=0.

¹⁴ Medicare Rights Center, “Medicare Advantage 101” (July 2023), <https://www.medicarerights.org/policy-series/medicare-advantage-101>.