United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

February 14, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: Comment on Notice of Proposed Rulemaking, CMS–4201–P, Proposed Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program

Dear Administrator Brooks-LaSure,

I am writing to offer my comments on the *Proposed Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program* ("proposed rule") published on December 27, 2022.[1] For more than 57 years, the Medicare guarantee has meant health care and financial security for seniors and people living with disabilities. The Medicare Advantage (MA) program is part of Medicare – and I appreciate common-sense rulemaking from the Centers for Medicare and Medicaid Services (CMS) to ensure MA plans deliver on that guarantee.

In recent years, the MA program has provided Oregonians and Medicare beneficiaries around the country with value by offering plans that coordinate care and invest in the long-term health of their enrollees. However, it has become clear that not all enrollees are seeing that value or being put first. I strongly support the proposed rule as it seeks to restore important protections against deceptive and fraudulent marketing tactics, expands access to non-physician behavioral health providers, and promotes health equity for historically underserved communities.

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1 Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, Medicare Parts A, B, C, and D Overpayment Provisions of the Affordable Care Act and Programs of All-Inclusive Care for the Elderly; Health Information Technology Standards and Implementation Specifications*, 87 Fed. Reg. 247 (December 27, 2022).

I offer the following comments on the proposed rule.

Tightening Marketing Standards and Oversight are Critical to Support Consumer Choice

A Senate Finance Committee investigation of MA plan marketing behavior found examples of high-pressure tactics, misleading language, unsolicited cold-calls, and the use of the Medicare name and logo in marketing and branding that can mislead seniors into mistaking private agents and brokers for the Federal government. As noted in CMS's final rule for 2023, Medicare received more than twice the numbers of complaints from seniors regarding MAplans in 2021 than it did in 2020.[2] In addition, too often agents and brokers did not collect the basic information needed to properly enroll a senior into the MA plan that will meet his or her needs. The proposed policies will make it easier for consumers to understand their plan options and make the best choices for their health needs. I urge the Administration to finalize these policies as proposed.

In addition, I strongly encourage CMS to use the information it already collects, such as rapid disenrollment rates, to target audits and oversight activities to protect Medicare beneficiaries from fraudsters, and close loopholes allowing agents and brokers to inappropriately use Medicare beneficiary personal information for marketing purposes.

Greater Oversight of Provider Directories is Needed to Access Care

MA plans can use provider networks to guide their enrollees to certain providers through lower cost-sharing. This means that enrollees who see out-of-network providers can face higher cost sharing and undermine the plan's ability to coordinate care among their network of providers. Since provider networks are, by design, limited and can result in differential copayments it is important for consumers to know who is in a plan's network from the outset. This information *must* be available to beneficiaries to inform plan choice but inaccurate provider directories may mean that people with Medicare are making choices about their coverage based on incorrect information. Additionally, when trying to access care, beneficiaries who enroll in MA plans need to know which providers are in-network. Without an accurate directory, it might be easier to find a needle in a haystack than find an in-network provider, particularly when it comes to behavioral health.

I fully support the proposed requirements to make MA provider directories more useful to patients by including a provider's cultural and linguistic capabilities, accessibility for people with physical disabilities, and indicating whether the provider offers medication for opioid use disorder.

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2 Department of Health and Human Services, *Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs*, 87 Fed. Reg. 8 (January 12, 2022).

To ensure that provider directories fulfill their important function for Medicare beneficiaries, they must be accurate and up-to-date. A 2014 study of dermatology networks in MA found that nearly half of listings for dermatologists were duplicates and more than half of the remaining listings were not reachable, did not accept the plan, or did not have an available appointment.[3] CMS's own audits from 2016 through 2018 have found similarly dismal results.[4]

I strongly urge CMS to build on the proposed changes to include oversight of provider directory accuracy, such as by examining accuracy through regular audits or publicly posting provider directories as machine-readable files on the CMS website. Publicly posting MA provider directories would be the most minimal step as it would allow stakeholders and researchers to use these data to help policymakers and the public evaluate the accuracy of MA plan directories.

Expanding network adequacy requirements to include non-physician behavioral health providers will improve access to care

The proposed rule's policy to include non-physician behavioral health providers would improve access to care for individuals with mental health and substance use health needs. Non-physician behavioral health providers are essential providers who play a critical role in supporting the mental health of seniors and people with disabilities. For this reason, the *Consolidated Appropriations Act, 2023* added Medicare coverage of marriage and family therapists and licensed professional counselors. I urge CMS to finalize the policy as proposed and extend the network adequacy requirements to include marriage and family therapists and licensed professional counselors as well.

Reducing Health Inequities Will Improve Beneficiary Health and Well-Being

I strongly support CMS' efforts to ensure that MA plans' quality improvement efforts are aligned with the 2022 CMS strategic plan for advancing health equity. Recent studies by the CMS Office of Minority Health and academic research has found that health disparities exist within the MA program among vulnerable populations.[5,6] MA plans have multiple avenues and opportunities to address these disparities and gaps in care for underserved populations who have been subject to systemic discrimination. I applaud CMS for encouraging plans to build activities that reduce

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3 Resneck JS Jr et al. The accuracy of dermatology network physician directories posted by Medicare Advantage health plans in an era of narrow networks. JAMA Dermatol. 2014 Dec;150(12):1290-7. doi: 10.1001/jamadermatol.2014.3902.

4 CMS, Provider Directory Audits, https://www.cms.gov/medicare/health-plans/managedcaremarketing.

5 CMS and RAND Corporation, Disparities in Health Care in Medicare Advantage by Race, Ethnicity, and Sex, April 2022. Available at: https://www.cms.gov/files/document/disparities-health-care-medicare-advantage-race-ethnicity-and-sex.pdf

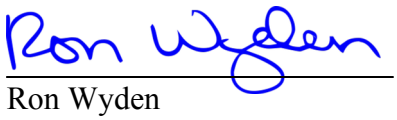
6 Park S, Fishman P, Coe NB. Racial disparities in avoidable hospitalizations in traditional medicare and medicare advantage. Medical Care. 2021 Nov 30;59(11):989-96. Breslau J, Elliott MN, Haviland AM, Klein DJ, Dembosky JW, Adams JL, Gaillot SJ, Horvitz-Lennon M, Schneider EC. Racial and ethnic differences in the attainment of behavioral health quality measures in Medicare Advantage plans. Health Affairs. 2018 Oct 1;37(10):1685-92.

disparities into plan's quality improvement programs as well as for rewarding plans that improve care among enrollees with social risk factors through the Health Equity Index. I urge CMS to finalize these changes as proposed.

Conclusion

Thank you for your thoughtful stewardship of the MA program as it looks to deliver on the Medicare guarantee of health care for seniors and people with disabilities. I urge you to finalize this rule to advance policies that protect beneficiaries from harmful MA plan marketing tactics, expand access to behavioral health providers, and improve health equity. Thank you for your consideration. I look forward to continuing to work with you in the days ahead.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on Finance

CC: Xavier Becerra, Secretary, United States Department of Health & Human Services, Meena Seshamani, Deputy Administrator and Director of Center for Medicare