

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

May 12, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Administrator Tavenner:

Thank you for your recent letter responding to our concerns about the 2015 Advanced Notice on Payments for Medicare Advantage. Although we appreciate your statement that you share our aim of ensuring that Medicare Advantage plans “continue to be available and affordable” to seniors around the country, we believe that the final rate announcement issued by the Centers for Medicare and Medicaid Services (CMS) on April 7, 2014, will undermine that goal. Overall, we are concerned that the cuts to Medicare Advantage plans will result in higher costs and fewer choices for millions of seniors who currently enjoy high-quality, affordable plans, and the possibility that some will lose their current plan altogether. Seniors should not have to worry about whether or not their Medicare Advantage plan will be there for them. Unfortunately, because the Patient Protection and Affordable Care Act (PPACA) cut more than \$300 billion from the Medicare Advantage program and spent the money on new programs outside of Medicare, seniors’ access to their Medicare Advantage plans is under threat.

In announcing the 2015 Rate Announcement for Medicare Advantage plans, CMS said it “estimates the overall net change to plan payments between 2014 and 2015 to be +0.4 percent.”<sup>1</sup> However, most objective observers, including many market analysts and industry researchers, concluded that the overall net impact of the finalized changes actually amounts to approximately an over three percent cut to Medicare Advantage plans.<sup>2</sup> Troublingly, this cut comes on the heels of additional payment reductions last year, and could result in double-digit cuts to some plans within a 24-month period.

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<sup>1</sup> CMS Press Release on Monday, April 7, 2014, “CMS Ensures Higher Value and Quality for Medicare Health and Drug Plans,” available online: <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-04-07.html>

<sup>2</sup> For example, consider market analysis from several independent financial firms:

Bank of America, [http://research1.ml.com/C/?q=ZfU689DphzdCYNeD00HeWw\\_&e=Iplatt%40ahip.org&h=GGM5FQ](http://research1.ml.com/C/?q=ZfU689DphzdCYNeD00HeWw_&e=Iplatt%40ahip.org&h=GGM5FQ)

Citi, <https://ir.citi.com/tsnMSodnVKozSZ9bBlakDE5vG2XgtHDDMYVeZZIPtW0%3D>

JP Morgan, <https://markets.jpmorgan.com/research/email/-4tuk37k/GPS-1362914-0.pdf>

Seniors will feel the effects of these cuts directly. One recent study from a former director of the Congressional Budget Office projects that, overall, the cuts average about \$317, or 3.07 percent, per Medicare Advantage enrollee compared to the rates in effect for 2014. This same study tallied the cumulative effect of the cuts from PPACA to conclude that in 2015, on average, seniors with a Medicare Advantage plan are facing “a benefits reduction of about \$1,538, or 13.32 percent, below the level projected for 2015 in the pre-ACA baseline.”<sup>3</sup>

Undoubtedly, PPACA’s cuts to Medicare Advantage plans will directly affect plan offerings, choice of providers, and patient care. Under the Medical Loss Ratio requirements of the president’s health care law, the vast majority of the cuts to Medicare Advantage plans—80-85 percent—result in cuts to doctors, nurses, care coordinators, hospitals, and other health care providers. These cuts will force many plans to cut back on proven strategies that focus on chronic disease management, prevention and wellness, care coordination, and other efforts to keep seniors healthier, happier, and out of the hospital.

At the House Energy and Commerce Committee, we have heard from numerous physicians who are worried that the continued cuts to Medicare Advantage plans will negatively impact some of the most disadvantaged enrollees with multiple diseases or conditions. As a physician testifying before our Committee explained, Medicare Advantage’s “payment structure—when offered through an accountable physician organization—incentivizes value, preventative services, care coordination, and a focus on quality.”<sup>4</sup> Many physicians voiced similar concerns to CMS back in March, when more than 140 physician organizations wrote CMS, warning that the continued Medicare Advantage cuts would reduce some of the best coordinated, highest quality care.<sup>5</sup>

To date, the administration has largely dismissed concerns about what impact the continued Medicare Advantages cuts will have on seniors’ health care choices. CMS press releases have touted cherry-picked facts, noting that enrollment is at “an all-time high” and that “nearly 30 percent of Medicare beneficiaries are enrolled in a Medicare Advantage plan.” Such a statement does not acknowledge the looming impact of PPACA’s cuts to Medicare Advantage. Currently only about 20 percent of PPACA’s more than \$300 billion in cuts to Medicare Advantage have been phased-in.

The Medicare Trustees confirm that many seniors will lose their Medicare Advantage plan over the long-term. In their 2013 annual report, the Medicare Trustees warned that “annual decreases in enrollment are projected to begin in 2015 and continue through 2018 as a result of the benchmark and rebate provisions of the Affordable Care Act.”<sup>6</sup> In other words, because of the cuts to Medicare Advantage under the president’s health care law, unless Congress intervenes, millions of seniors will face fewer choices, higher costs, or lose their coverage altogether.

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<sup>3</sup> <http://americanactionforum.org/research/medicare-advantage-cuts-in-the-affordable-care-act-april-2014-update>

<sup>4</sup> Statement of Dr. Mitchell Lew with CAPG, before the House Energy and Commerce Committee, Subcommittee on Health, on March 13, 2014, available online: <http://docs.house.gov/meetings/IF/IF14/20140313/101895/HHRG-113-IF14-Wstate-LewM-20140313.pdf>

<sup>5</sup> <http://www.capg.org/modules/showdocument.aspx?documentid=1474>

<sup>6</sup> CMS Press Release on Monday, April 7, 2014, “CMS Ensures Higher Value and Quality for Medicare Health and Drug Plans,” available online: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2013.pdf>

We are gravely concerned that the underlying cuts specified in federal statute as a result of PPACA will cause more seniors to lose coverage options and face higher costs. This concern is one based on math, not partisanship. In fact, there are broad, bipartisan concerns over the impact PPACA's Medicare Advantage cuts—concerns even from many members of Congress who voted for the law. Here in the House, more than 200 members wrote you expressing concern with PPACA's cuts to Medicare Advantage.<sup>7</sup> And in the Senate, at least 40 Senators expressed their concerns to CMS in a letter.<sup>8</sup> Some concerned governors have even weighed in on the issue with the President.<sup>9</sup>

So far, the full brunt of PPACA's cuts to Medicare Advantage has yet to be felt. Some of the cuts have been marginally blunted by regulatory and administrative steps taken by your agency. For example, the MA Quality Bonus Payment Demonstration, which GAO said was so large scale, costly, and unprecedented that it raised serious legal concerns, ends this year.<sup>10</sup> And this year, your agency also took steps to reduce the full impact of PPACA's cuts, making changes to risk-adjustment methodologies that CMS acknowledged "will increase the level of payments to all plans" relative to your original proposal.<sup>11</sup> But even if, each year in the future, CMS utilizes every possible legal, regulatory, and administrative measure at its disposal, millions of seniors will still be negatively affected.

Far too many Americans have already lost the health care plans they have and like; we are concerned that seniors with Medicare Advantage may suffer the same result. Accordingly, on behalf of the millions of seniors who have Medicare Advantage plans and would like to keep them, we request your responses to the following questions:

- 1) What are CMS's estimates about how many seniors currently enrolled in Medicare Advantage plans will:
  - a. Face higher premiums, cost-sharing, or deductibles in 2017?
  - b. Face fewer plan choices in 2107?
  - c. Lose their current plan in 2017?
- 2) Government data show that a disproportionately higher percentage of minority seniors are enrolled in Medicare Advantage plans. What is your plan to ensure that PPACA's cuts to Medicare Advantage do not disproportionately harm these seniors?
- 3) In their 2013 annual report, the Medicare Trustees warned that "annual decreases in enrollment are projected to begin in 2015 and continue through 2018 as a result of the benchmark and rebate provisions of the Affordable Care Act." Do you disagree with this estimate?

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<sup>7</sup> Letter available online:

<http://barrow.house.gov/sites/barrow.house.gov/files/CMS%20Medicare%20Advantage%202015%20Advance%20Notice.pdf>

<sup>8</sup> Letter available online: <http://www.ahipcoverage.com/wp-content/uploads/2014/02/Bipartisan-Senate-MA-Letter-to-CMS-2015.pdf>

<sup>9</sup> Letter available online: <http://governor.state.tx.us/files/press-office/2014-04-15-MedicareAdvantageLetter.pdf>

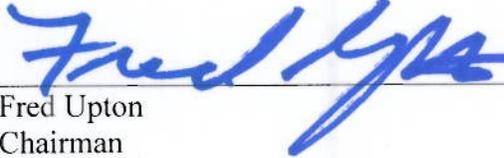
<sup>10</sup> Government Accountability Office, "Quality Bonus Payment Demonstration Has Design Flaws and Raises Legal Concerns," Statement of James Cosgrove and Edda Emmanuelli-Perez, July 25, 2012. Available online: <http://www.gao.gov/assets/600/592920.pdf>

<sup>11</sup> CMS Press Release on Monday, April 7, 2014, "CMS Ensures Higher Value and Quality for Medicare Health and Drug Plans," available online: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2013.pdf>

- 4) Would the administration support bipartisan efforts to reverse PPACA's cuts to Medicare Advantage, if paid for with bipartisan offsets in a way that does not increase the deficit?
- 5) What new government programs in PPACA are being paid for from the more than \$300 billion in Medicare Advantage cuts under the law?

Thank you for your attention to this matter. We respectfully request a response to these important questions within two weeks from the date of your receipt of this letter.

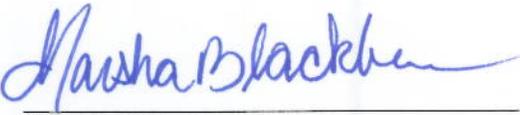
Sincerely,

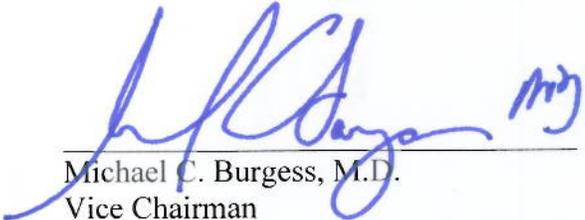
  
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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Frank Pallone, Ranking Member  
Subcommittee on Health

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations