750 First Street NE, Suite 800, Washington, DC 20002-4241
202.408.8600 » SocialWorkers.org

NASW
National Association of Social Workers

March 6, 2023

Meena Seshamani, MD, PhD
Director
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2023-0010-0002
P.O. Box 8013
Baltimore, MD 21244

Submitted electronically via https://www.regulations.gov/commenton/CMS-2023-0010-0002

Re: Advance Notice of Methodological Changes for Calendar Year (CY) 2024 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies (CMS-2023-0010-0002, published February 17, 2023)

Dear Dr. Seshamani:

On behalf of the National Association of Social Workers (NASW), I am submitting comments on the Advance Notice of Methodological Changes for CY 2024 for MA Capitation Rates and Part C and Part D Payment Policies (CMS-2023-0010-0002).

Founded in 1955, NASW is the largest membership organization of professional social workers in the United States, representing more than 110,000 social workers. We work to enhance the professional growth and development of our members, to create and maintain professional standards, and to advance sound social policies.

Medicare policy is a key priority for NASW. Social workers play an essential role in serving Medicare beneficiaries, including those enrolled in MA, other Part C plans, and Medicare Part D prescription drug plans (PDPs). Our comments focus on MA enrollees, who constituted nearly half of Medicare beneficiaries in 2022.[1] Many of these beneficiaries were enrolled in MA plans through their retiree health benefits and did not have any option other than MA.[2]

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[1] Freed, M., Fuglesten Biniek, J., Damico, A., & Neuman, T. (2022). *Medicare Advantage in 2022: Enrollment update and key trends.* Kaiser Family Foundation. https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2022-enrollment-update-and-key-trends/

[2] Freed, M., Neuman, T., Rae, M., & Fuglesten Biniek, J. (2022). *Medicare Advantage coverage is rising for the declining share of Medicare beneficiaries with retiree health benefits.* Kaiser Family Foundation. https://www.kff.org/medicare/issue-brief/medicare-advantage-coverage-is-rising-for-the-declining-share-of-medicare-beneficiaries-with-retiree-health-benefits/

According to the advance notice, MA plans will, on average, receive a revenue increase of about 1.03 percent in 2024—a significant decrease from the approximately 8 percent increase given to plans in 2023. NASW strongly supports this change, which reflects a substantive effort to reduce long-standing CMS overpayments to MA plans. As noted in our August 2022 response[3] to CMS's request for information regarding MA,[4] multiple entities have expressed concerns about excessive payments to MA plans. In a June 2022 Congressional hearing about MA oversight, the acting director for health care in the Government Accountability Office (GAO) stated:

> Due to our concerns about the program's susceptibility to mismanagement and improper payments as well as its size and complexity, we have designated Medicare, including Medicare Advantage, as a high-risk program. We—along with Department of Health and Human Services [HHS] Office of Inspector General [OIG] and others—have identified significant concerns with CMS's oversight of the MA program.[5]

Also testifying at the hearing were representatives of OIG[6] and the Medicare Payment Advisory Commission (MedPAC),[7] who drew on their agencies' respective reports highlighting problems with MA practices and payment policies.[8,9,10] For example, MedPAC's March 2022 report found that Medicare spends 4 percent more on MA than it would spend on traditional Medicare (an estimated $12 billion in excess payments last year alone) and that "private plans in the aggregate have never produced savings for Medicare, due to policies governing payment rates to MA plans that the Commission has found to be deeply flawed."[11] MedPAC also observed that "continu[ing] to overpay MA plans … will further worsen Medicare's fiscal sustainability."

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[3] McClain, A. (2022, August 31). *NASW response to CMS's request for information regarding Medicare (CMS–4203–NC)* [Letter]. National Association of Social Workers. https://bit.ly/NASW-Medicare-Advantage-2022

[4] Medicare Program; Request for Information on Medicare, 87 Fed. Reg. 46918 (published August 1, 2022).

[5] *Hearing on "Protecting America's Seniors: Oversight of Private Sector Medicare Advantage Plans" Before the H. Comm. on Energy and Commerce*, 117th Cong. 11 (2022) (statement of Leslie V. Gordon, Acting Dir., Health Care, Gov't Accountability Off.). https://www.gao.gov/products/gao-22-106026

[6] *Hearing on "Protecting America's Seniors: Oversight of Private Sector Medicare Advantage Plans" Before the H. Comm. on Energy and Commerce*, 117th Cong. (2022) (statement of Erin Bliss, Assistant Inspector Gen., Off. of Evaluation and Inspections, Off. of Inspector Gen., Dep't of Health and Human Services). https://oig.hhs.gov/documents/testimony/1039/E._Bliss_Medicare_Advantage_Testimony.pdf

[7] *Hearing on "Protecting America's Seniors: Oversight of Private Sector Medicare Advantage Plans" Before the H. Comm. on Energy and Commerce*, 117th Cong. (2022) (statement of James E. Matthew, Exec. Dir., Medicare Payment Advisory Comm'n). https://www.congress.gov/117/meeting/house/114959/witnesses/HHRG-117-IF02-Wstate-MathewsJ-20220628.pdf

[8] Office of the Inspector General. (2021). *Some Medicare Advantage companies leveraged chart reviews and health risk assessments to disproportionately drive payments* (OEI-03-17-00474) [Report in brief]. U.S. Department of Health and Human Services. https://oig.hhs.gov/oei/reports/OEI-03-17-00474.asp

[9] Office of the Inspector General. (2022). *Some Medicare Advantage organization denials of prior authorization requests raise concerns about beneficiary access to medically necessary care* (OEI-09-18-00260) [Report in brief]. U.S. Department of Health and Human Services. https://oig.hhs.gov/oei/reports/OEI-09-18-00260.asp

[10] Medicare Payment Advisory Commission. (2022). *March 2022 report to the Congress: Medicare payment policy.* https://www.medpac.gov/document/march-2022-report-to-the-congress-medicare-payment-policy/

[11] Medicare Payment Advisory Commission. (2022). *March 2022 report to the Congress: Medicare payment policy.* https://www.medpac.gov/document/march-2022-report-to-the-congress-medicare-payment-policy/ [Quotes from pp. 411 & 417]

Moreover, beneficiary advocacy organizations, such as the Leadership Council of Aging Organizations[12] (of which NASW is a member), the Center for Medicare Advocacy,[13] and the Medicare Rights Center[14] have repeatedly drawn attention to excessive payment of MA plans, as have other organizations and media outlets—including, to name a few, Bloomberg Law,[15] the Committee for a Responsible Budget,[16] Commonwealth Fund,[17] Health Affairs,[18] the journal *Health Services Research*,[19] the Kaiser Family Foundation,[20] Kaiser Health News,[21] the *New York Times*,[22] and the Urban Institute.[23]

These assessments reinforce longstanding NASW concerns that overpayments to MA are negatively affecting not only Medicare's long-term sustainability and taxpayer costs, but also costs (as manifested in Part B premium hikes and limitations on available care) for *all* Medicare beneficiaries. As the Center for Medicare Advocacy recently stated, "such wasted funds could be used to expand Medicare and other health coverage,"[24] such as comprehensive dental, hearing, and vision care for all Medicare

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[12] Leadership Council of Aging Organizations. (2020). *Statement of Leadership Council of Aging Organizations' priorities for President-Elect Biden's 2020 transition.* https://www.lcao.org/wp-content/uploads/2020/12/lcao-transition-priorities.pdf

[13] Please refer to the following Center for Medicare Advocacy publications, for example:
Lipschutz, D. (2022). *Special report: Recent articles and reports shed light on Medicare Advantage issues.* Center for Medicare Advocacy. https://medicareadvocacy.org/special-report-recent-articles-and-reports-shed-light-on-medicare-advantage-issues/
Moon, M. (2022). *Medicare Advantage is not the solution to Medicare equity or solvency problems.* Center for Medicare Advocacy. https://medicareadvocacy.org/medicare-advantage-is-not-the-solution-to-medicare-equity-or-solvency-problems/

[14] Copeland, L. (2022). *Medicare watch: CMS to release audit findings on overpayments to Medicare Advantage plans.* Medicare Rights Center. https://www.medicarerights.org/medicare-watch/2022/10/27/cms-to-release-audit-findings-on-overpayments-to-medicare-advantage-plans

[15] Pugh, T. (2022, October 18). *Growth of private Medicare plans clouded by payment questions.* https://news.bloomberglaw.com/health-law-and-business/growth-of-private-medicare-plans-clouded-by-payment-questions

[16] Committee for a Responsible Budget. (2022, October 19). *New York Times highlights need to improve Medicare Advantage* [Blog post]. https://www.crfb.org/blogs/new-york-times-highlights-need-improve-medicare-advantage

[17] Hofstetter, M., & Klein, S. (2022, February 17). Taking stock of Medicare Advantage: Risk adjustment. *To the Point.* https://www.commonwealthfund.org/blog/2022/taking-stock-medicare-advantage-risk-adjustment

[18] Gilfillan, R., & Berwick, D. M. (2022, Medicare Advantage, direct contracting, and the Medicare 'money machine,' part 1: The risk-score game. *Health Affairs Forefront* [Blog]. https://www.healthaffairs.org/do/10.1377/forefront.20210927.6239

[19] Jacobs, P. D., & Kronick, R. (2021). The effects of coding intensity in Medicare Advantage on plan benefits and finances. *Health Services Research, 56*(2), 178–187. https://doi.org/10.1111/1475-6773.13591

[20] Kaiser Family Foundation. (2021, August 17). *Payments to Medicare Advantage plans boosted Medicare spending by $7 billion in 2019* [Press release]. https://www.kff.org/medicare/press-release/payments-to-medicare-advantage-plans-boosted-medicare-spending-by-7-billion-in-2019/

[21] Schulte, F. (2022, October 14). *Lawsuit by KHN prompts government to release Medicare Advantage audits.* https://khn.org/news/article/lawsuit-khn-government-release-medicare-advantage-audits/

[22] Abelson, R., & Sanger-Katz, M. (2022, October 8). 'The cash monster was insatiable': How insurers exploited Medicare for billions. *New York Times.* https://www.nytimes.com/2022/10/08/upshot/medicare-advantage-fraud-allegations.html?searchResultPosition=3

[23] Berenson, R. A., Garrett, B., & Shartzer, A. (2022). *Understanding Medicare Advantage Payment: How the program allows and obscures overpayment.* Urban Institute. https://www.urban.org/sites/default/files/2022-09/Understanding%20Medicare%20Advantage%20Payment.pdf

[24] Center for Medicare Advocacy. (2023, February 3). *Center for Medicare Advocacy statement on recent Medicare Advantage payment policies and proposals* [Press release]. https://medicareadvocacy.org/center-for-medicare-advocacy-statement-on-recent-medicare-advantage-payment-policies-and-proposals/ [Quote from p. 6]

beneficiaries. Instead, such "supplemental benefits" are currently available only to MA enrollees, albeit on a discretionary basis that falls far short of typical MA plan marketing. Consequently, NASW applauds CMS's proposals to revamp its risk adjustment and star rating methodology. Implementation of these changes would enable the agency to determine, somewhat more accurately, how payments to MA plans are calculated.

However, a more comprehensive strategy is needed to remedy MA financing problems. Integral to such an approach is coding intensity adjustment. A recent MedPAC report[25] made clear that Medicare fee-for-service providers have little incentive to code diagnoses because payment to such providers is based on services delivered. In contrast, MA plans have a financial incentive to adjust enrollee diagnoses (that is, assign higher risk scores) to increase the capitated payments they receive from CMS to cover enrollees' anticipated health care costs. As the Commonwealth Fund has noted, "This means that Medicare Advantage beneficiaries may appear to have more health conditions than similar beneficiaries enrolled in traditional Medicare, driving up plan payments."[26]

Although the Secretary of HHS is required by law to mitigate these coding differences by reducing MA risk scores, the statutory minimum adjustment of 5.9 percent has limited effect. For example, MedPAC estimated that in 2020 the risk scores for MA enrollees were 9.5% higher than what they would have been for beneficiaries who were enrolled in traditional Medicare and had comparable health status. Even with CMS's coding adjustment of 5.9 percent for that year, MA risk scores were still more than 3.6 percent higher than FFS risk scores, generating about $12 billion in excess payments to MA plans.[27] Thus, by modifying MA plan payments across the board, CMS can counter MA plans common tactic of driving up enrollee risk scores to increase the payments they receive. Yet, in section J of the advance notice, CMS has proposed to apply an MA coding pattern difference adjustment factor of only 5.90 percent. NASW urges CMS to use its statutory discretion to employ payment adjustments to MA plans in CY 2024 by more than the 5.9 percent minimum.

Thank you for your consideration of NASW's comments. Proceeding with the proposed changes in the advance notice while increasing the coding intensity adjustment is essential to preventing continued cost escalation both for individuals and for the Medicare program. Please contact me at BBedney.nasw@socialworkers.org if you need additional information.

Sincerely,

Barbara Bedney

Barbara Bedney, PhD, MSW
NASW Chief of Programs

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[25] Medicare Payment Advisory Commission. (2022). The Medicare Advantage program: Status report and mandated report on dual-eligible special needs plans. In *March 2022 report to the Congress: Medicare payment policy* (pp. 409–461). https://www.medpac.gov/document/march-2022-report-to-the-congress-medicare-payment-policy/

[26] Hofstetter, M., & Klein, S. (2022, February 17). Taking stock of Medicare Advantage: Risk adjustment. *To the Point.* https://www.commonwealthfund.org/blog/2022/taking-stock-medicare-advantage-risk-adjustment [Quote from para. 2]

[27] Please refer to footnote 25.