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IN LETTER TO CMS, HATCH, UPTON, CAMP DEMAND ANSWERS ON CUTS TO MEDICARE ADVANTAGE PROGRAM

Leaders Concerned Obama Administration's Cuts Will Harm Available Health Care for Seniors

WASHINGTON – In a letter sent to the Centers for Medicare and Medicaid Services' (CMS) Acting Administrator Marilyn Tavenner today, Senate Finance Committee Ranking Member Orrin Hatch (R-Utah), House Energy and Commerce Committee Chairman Fred Upton (R-Mich.), and Ways and Means Chairman Dave Camp (R-Mich.) outlined their concerns with how cuts of more than $300 billion to the Medicare Advantage (MA) program under the Patient Protection and Affordable Care Act (PPACA) will impact patient care. CMS is set to close its comment period covering the programs' payment policies for MA plans tomorrow.

In the letter, the members wrote, "While the Obama Administration has expressed its support for the MA program growth in the past and taken credit for increased enrollment during the demonstration period, we are concerned that cuts contained in the President's health law and administrative policies are undermining that stated goal. "

They went on to highlight five areas of concern for how the Obama Administration has conducted changes to the MA program, including a lack of transparency, restricting access to care with artificially low physician payment assumptions, hurting benefits with risk model recalibration, creating confusion with late Medical Loss Ratio regulations, and limiting patient choice with arbitrary price controls. The three members requested a response from CMS addressing these specific concerns by March 15.

The Medicare Advantage program allows seniors to gain access through a private insurance plan to not only traditional Medicare in-patient and out-patient care, but auxiliary benefits like vision care and better overall care coordination.

A signed copy of the letter can be found [HERE](http://www.finance.senate.gov/newsroom/ranking/release/?id=4ec11764-8c9b-4958-aa9f-9f3867520e1c) (http://www.finance.senate.gov/newsroom/ranking/release/?id=4ec11764-8c9b-4958-aa9f-9f3867520e1c) and the text of the letter is below:

Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

We are writing with concerns regarding the Centers for Medicare and Medicaid Services' (CMS) February 15, 2013, announcements affecting the Medicare Advantage (MA) program payments and policies. The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (collectively known as PPACA) cut $716 billion out of the nearly insolvent Medicare program to create a new entitlement program, and $306 billion of those cuts come from the Medicare Advantage program. When the cuts are fully implemented in 2017, the government's own actuaries estimate that projected patient enrollment in MA will be cut in half. This is especially concerning since currently more than one in four seniors, including a significant number of low-income and minority beneficiaries, have come to rely on the better benefits, enhanced care coordination, and higher quality coverage offered through the MA program.

Were it not for a legally-dubious $8.3 billion demonstration that masked the effects of the MA cuts, PPACA would have already hurt plan choices for seniors in October of 2012 - right before the 2012 presidential election. Barely three months after the election, the cumulative impact of the Administration's policies is now surfacing. According to external estimates, the combined effect of the Administration's sequester, PPACA cuts and higher taxes, and harmful new policies will result in at least an 8 percent cut to the MA program for calendar year (CY) 2014. Moreover, an analysis by Oliver Wyman estimates that PPACA will mean a new tax burden of $3,590 over the next 10 years for each MA patient. While the President promised that Americans could keep the health plans they liked, we are concerned that the combined effects of these policies will jeopardize beneficiary access to the MA plans of their choice. In fact, the non-partisan Congressional Budget Office estimated that cuts to MA plans contained in PPACA would result in beneficiaries losing $816 in extra benefits in 2019.

While the Obama Administration has expressed its support for the MA program growth in the past and taken credit for increased enrollment during the demonstration period, we are concerned that cuts contained in the President's health law and administrative policies are undermining that stated goal. We urge you to consider the following issues:

- <u>Lack of Transparency</u>: The comment period for the advance payment notice closes just two weeks after its publication, but there are many outstanding questions surrounding the methodology used to determine the proposed rates. We request that you make publicly available the methodology and data sets used to determine the per beneficiary Medicare cost growth rates and county level benchmarks applicable to the CY2014 rates.

- Restricting Access with Artificially Low Physician Payment Assumptions: Unfortunately, PPACA used its $716 billion in Medicare cuts to create new spending obligations rather than to fix Medicare's sustainable growth rate formula (SGR). Since CMS chooses to develop MA rates based on the assumption that Congress will not patch the [27 percent] physician payment cut scheduled for 2014, payment rates to MA plans are artificially low. Please provide us with a legal analysis on what prevents CMS from assuming more realistic payment rates, especially given the fact that Congress has fixed the SGR with at least a 0 percent update for the last 11 years.

- Hurting Benefits with Risk Model Recalibration: While we value accuracy in CMS' risk-adjustment models, the proposed changes to the model are coming at a time when plans are expected to comply with other major program changes. We request that CMS implement further changes in a manner that gives plans time to adjust and prevent possible disruptions in their benefit offerings. Additionally, we ask that you provide the specific methodology for how CMS plans to implement changes in a budget neutral manner and additional information on your development of a risk adjustment model based on encounter data, rather than Fee For Service claims.

- Creating Confusion with Late MLR Regulations: In addition to the many other changes in the MA program, plans are expected to comply with new medical loss ratios (MLR) in 2014. While CMS has started the 2014 bidding process for MA plans, CMS has yet to finalize the guidance for the new MLR restrictions that plans will need to account for in their bids. As we have expressed regarding the implementation of other PPACA policies, the last-minute nature of agency rule-making presents major challenges for operational planning and ultimately hurts patient care delivery.

- Limiting Choice with Arbitrary Price Controls: Even though the statute does not require it, CMS has chosen to impose arbitrary price controls, known as total beneficiary cost (TBC) thresholds, on MA plans. The restrictive nature of the TBC thresholds, and the proposed $30 level, prevents plans from adjusting their cost-sharing and benefit designs and offering competitive premiums. While we have standing concerns with these types of price controls, this policy and proposed threshold is especially concerning in a year when plans are adjusting to other major rate and cost changes. It is our understanding that the announced TBC threshold is an average and that CMS expects to use discretion in applying this threshold to plans. Please detail the variation in TBC thresholds (by plan and county) that CMS applied to plans last year and the variation it expects to apply this year.

We remain willing to work with you to stop PPACA's harmful effects on seniors' health care benefits. We believe that a strong and carefully structured MA program not only offers higher quality care to beneficiaries, but is also the foundation for addressing Medicare's long term fiscal challenges. We urge you to carefully consider the above issues and to provide a written response to our questions by March 15, 2013.

Sincerely,

Orrin G. Hatch, Ranking Member
Senate Committee on Finance

Fred Upton, Chairman
House Committee on Energy and Commerce

Dave Camp, Chairman
House Committee on Ways and Means

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