PHYSICIANS FOR A NATIONAL HEALTH PROGRAM

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The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

We are a group of 24,000 physicians and other health professionals who are deeply concerned about a threat to Traditional Medicare (TM). The Direct Contracting (DC) pilot program, initiated under President Trump but continued under President Biden, is handing control of TM beneficiaries' health care to third-party middlemen called Direct Contracting Entities (DCEs); DCEs include firms controlled by commercial insurers, for-profit hospital and dialysis chains, and private equity investors.

Last night, a group representing the DCE industry sent you a letter[1] asking you to fix, not end, the program, arguing that ending DC now would undermine the work of the CMS Innovation Center (CMMI). Quite the opposite: DC has tarnished the reputation of CMMI, CMS, and HHS, and ending the program would demonstrate a commitment to improved integrity and the best interests of beneficiaries.

Recently, advocates and journalists have drawn attention to the conflicts of interest present at the program's inception. DC was developed in 2019 by then CMMI director Adam Boehler, who, prior to joining CMMI, was founder and CEO of Landmark Health, which later won a DC contract[2]. After leaving the administration, Boehler was co-founder[3] of Rubicon Partners, which is now partnering[4] with physician practices to join DC or Medicare Advantage (MA) programs. During this time, HHS's own Office of General Counsel warned[5] that the DC draft program proposal referenced specific entities (Chen Med, Oak Street Health, Verily), raising serious ethical concerns that the program was established to benefit these companies. Several of the companies later won contracts[6] to be DCEs.

Because of the industry influence during the program's development, as well as the dangerous incentives for DCEs to earn greater profits by restricting patient care, we believe that superficial tweaks and cosmetic changes will not alter DC's fundamental flaws. Below we address some of the industry's suggested "refinements," and explain why they won't end this dangerous threat to Medicare.

Limit program participation and increase provider control: The industry, particularly the association of ACOs, suggests that CMMI increase the percentage of providers in each DCE's governing body, currently set at a minimum of 25%[7]. However, even with more provider governance, DCEs are ultimately accountable to investors, which include private equity firms and commercial insurers active in MA. Investors want a return on their investment, creating a dangerous incentive for DCEs to both maximize revenues through upcoding, and minimize medical expenditures by restricting patient care.

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[1] https://www.naacos.com/continuing-and-improving-the-direct-contracting-model-sign-on-letter
[2] https://homehealthcarenews.com/2020/12/landmark-health-gearing-up-for-direct-contracting-participation/
[3] https://www.bloomberg.com/news/articles/2021-04-07/ex-trump-aide-boehler-launches-health-care-investment-firm
[4] https://buffalonews.com/business/local/why-a-group-of-wny-primary-care-practices-formed-a-joint-venture-with-private-equity/article_4ec762fe-88fd-11ec-8148-971dc93fac92.html
[5] https://theintercept.com/2021/12/14/medicare-privatized-health-care-insurance-direct-contracting-ethics/
[6] https://innovation.cms.gov/media/document/gpdc-model-participant-announcement
[7] https://innovation.cms.gov/files/x/dc-faqs.pdf

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Add "guardrails": The DCE industry is vague on proposed guardrails, but our experience from Medicare's other managed care experiment, Medicare Advantage (MA), shows that when regulators install new guardrails that threaten profits, the industry will simply build a bigger truck to run them over. For example, MA insurers engage in a kind of fraud called "upcoding[8]," exaggerating or fabricating patients' diagnoses to earn higher capitation payments. Despite government efforts[9] to crack down, insurers consistently find more sophisticated ways to updcode, such as using AI software to scan patient records for upcoding opportunities, paying[10] doctors to document additional diagnoses, sending insurer- employed nurses to seniors' homes[11], and buying provider practices[12] outright to control the coding process. As a result, Medicare overpaid MA insurers more than $106 billion[13] from 2010 through 2019.

Add "beneficiary protections": Industry lobbyists are vague about this proposal, but at its core, DC is a bait-and-switch for beneficiaries who chose TM because they value free choice of provider. Medicare "aligns" beneficiaries into a DCE without their full understanding or consent. The DCE then sends beneficiaries an annual notice, marked "No Action Required," which they are unlikely to read or understand. Seniors cannot opt out of a DCE unless they *change primary care providers*. In addition, the model gives DCEs a strong financial incentive to steer patients to their network of "preferred providers."

Implement a rebranding and name change: Until recently, most Medicare beneficiaries and most members of Congress had never heard of DC, for good reason: The program was never meant to be publicly scrutinized, or even publicly *known*. DC was created by the CMS Innovation Center[14], which is empowered to test and implement health payment models *without* Congressional approval or beneficiary input. Changing DC's name will only confuse and insult the beneficiaries it claims to serve.

From HMOs to Medicare Advantage to Direct Contracting, Medicare has been "experimenting" with managed care models for nearly 40 years. These models have never reduced spending or improved patient care. If middlemen in health care actually saved money and improved outcomes, the U.S. wouldn't have the most expensive and ineffective health care system in the world. We don't need to put seniors and people with disabilities through another failed experiment to prove this.

The DCE industry represents its own interests and that of its investors, and does not speak for physicians. As physicians, we urge you to end the dangerous DC program and work tirelessly to strengthen and protect Traditional Medicare, both for today and for generations to come.

Sincerely,

SRogersMD

Dr. Susan Rogers, President
Physicians for a National Health Program

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[8] https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.0768
[9] https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-files-civil-fraud-suit-against-anthem-inc-falsely-certifying
[10] http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf#page=410
[11] http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf#page=410
[12] https://www.healthaffairs.org/do/10.1377/hblog20210927.6239/full/
[13] https://www.npr.org/sections/health-shots/2021/11/11/1054281885/medicare-advantage-overcharges-exploding
[14] https://innovation.cms.gov/