

July 19, 2024

The Honorable Jason Smith
Chairman
House Committee on Ways and Means
1101 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
House Committee on Ways and Means
372 Cannon House Office Building
Washington, DC 20514

Dear Chairman Smith and Ranking Member Neal:

The Center for Medicare Advocacy (Center) writes to thank you for your work to address gaps in coverage and disparities in outcomes in Medicare.

The Center is a national, non-profit law organization that works to ensure access to Medicare, health equity, and quality health care. The organization provides education, legal assistance, research and analysis on behalf of older people and people with disabilities, particularly those with longer-term conditions. The Center's policy positions are based on its experience assisting thousands of individuals and their families with Medicare coverage and appeal issues annually. Additionally, the Center provides individual legal representation and, when necessary, challenges patterns and practices that inappropriately deny access to Medicare and necessary care.

As beneficiary advocates we would like to take this opportunity to alert you to areas of concern for beneficiaries in the following legislation that the Committee marked up on June 28, 2024: H.R. 1691, the "Ensuring Patient Access to Critical Breakthrough Products Act of 2023," H.R. 2407, the "Nancy Gardner Sewell Medicare Multi-Cancer Early Detection Screening Coverage Act," and H.R. 8816, the "Treat and Reduce Obesity Act of 2023." The Center's specific concerns for each bill are detailed below.

H.R. 1691, the "Ensuring Patient Access to Critical Breakthrough Products Act of 2023"

This legislation would allow FDA-designated medical breakthrough devices to be covered under Medicare during a four-year transitional period from the date of FDA approval. During this transitional period these devices would be deemed to be "reasonable and necessary," despite not going through Medicare's usual process of determining if complete evidence of efficacy, safety, or clinical benefit for use among Medicare beneficiaries has been met. Medicare's "reasonable and necessary" standard is a critical consumer protection tool that protects beneficiaries' health and well-being. This standard cannot be safely circumvented. We urge the Committee to address this issue and commit to protecting beneficiary safety.

H.R. 2407, the “Nancy Gardner Sewell Medicare Multi-Cancer Early Detection Screening Coverage Act”

This legislation allows Medicare to cover emerging blood-based cancer screenings that are FDA-approved, shown to have clinical benefit, and determined by the HHS Secretary to be “reasonable and necessary” for the prevention or early detection of an illness or disability. The legislation limits this coverage to Medicare beneficiaries who attain a certain age by January 1 of the relevant year or received a test in the prior 11 months. This arbitrary exclusion of large segments of the Medicare population is extremely problematic. Having coverage in Medicare that is available to certain groups of beneficiaries and excludes other beneficiaries without any logical reasoning, sets an alarming precedent. All beneficiaries should have equitable access to screenings and preventive care that is appropriate for them based on their medical needs. The Center cannot support this kind of random rationing of care.

H.R. 4818, the “Treat and Reduce Obesity Act of 2023”

This legislation would allow Medicare Part D to cover weight-loss medications for enrollees whose health insurance continuously covered the drug for the one-year period immediately prior to their enrollment in Part D.

Like H.R. 2407, this legislation would create a dangerous precedent of rationing essential life-saving treatments in Medicare, allowing only certain groups of beneficiaries to access necessary treatments. It is particularly troubling that those excluded from coverage would be exactly those who had not had access to the treatment previously and desperately need the medications to also address the varied comorbidities associated with untreated obesity, such as cancer, diabetes, and heart disease. It would improve beneficiary quality of life, health outcomes, and would also support the Medicare program’s finances if these beneficiaries could target the obesity that is often central to those other conditions. Addressing the high cost of prescription drugs, rather than rationing coverage, should be at the heart of such legislation. The Center urges the Committee to address this dangerous and discriminatory limit on care.

Thank you for your consideration. We look forward to continuing to work with the Committee on ensuring equitable and safe care for all Medicare beneficiaries. For additional information, please feel free to contact me at KKertesz@medicareadvocacy.org or (202) 293-5760.

Sincerely,

Kata Kertes

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