Issue Brief
August 7, 2025

Center for Medicare Advocacy
MedicareAdvocacy.org

Closing the VA-Medicare Advantage Payment Loophole: Reducing Waste and Advancing Access to Care for Veterans

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Key Takeaways

- The introduction of Medicare Advantage (MA) in 1997 created a statutory loophole where the federal government makes capitated payments to private insurers for MA and MA prescription drug (MAPD) plans under part C and standalone prescription drug plans (PDPs) under Part D while paying separately for the health services to veterans through the Veterans' Health Administration (VHA). The VA is prohibited from billing Medicare under the 1965 amendment to the Social Security Act, which created the Medicare program, so the federal government often pays twice for health services in cases of dual-enrolled veterans on MA plans.
- Veterans who are dual-enrolled in VA health benefits and MA plans use more healthcare on average than veterans who are only enrolled in VA health benefits, making costs that would be reimbursable to the VA if this loophole was closed even higher.
- The GUARD Veterans' Health Care Act aims to address this issue, and, if enacted, is predicted to save the VA and the federal government billions of dollars every year, that can be better spent to provide more quality health care to veterans and prevent waste from duplicative payments.
- The GUARD Veterans' Health Care Act closes a loophole in the Social Security Act that allows private insurers to profit from monthly capitated payments for veterans' MA plans for healthcare costs they do not ultimately pay. The Act gives the Veterans' Administration the authority to bill private insurers that administer MA plans who have already been paid a premium through CMS and recover funds spent on MA and Medicare Prescription Drug plan premiums for healthcare services and medications provided by the VA.

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Introduction

This Issue Brief outlines a statutory loophole created by a prohibition in the Social Security Act of 1965 that prohibits the Veterans' Health Administration (VHA) from billing Medicare for health care and services provided to veterans through the VA healthcare system.[1] With the 1997 introduction of privately-administered Medicare Part C and its expansion and introduction of Part D in 2003, taxpayers can be obligated to pay twice for some health care provided to veterans who are dually-enrolled in VHA health benefits and in Medicare Advantage (MA) and Medicare Advantage Prescription Drug (MAPD) plans under Part C and/or prescription drug plans offered by third-party prescription drug plan (PDP) sponsors under Part D.[2] This Issue Brief also explores a possible solution to address this duplicative payment through the GUARD Veterans' Health Care Act ("GUARD Act"), which would close the statutory loophole and make funds available to the Veterans Health Administration (VHA) for more quality healthcare to those who have served.

Background

Most veterans are eligible[3] for VHA health care benefits,[4] which include coverage for preventative services, inpatient hospital services, urgent and emergency care, assisted living and home care, prescriptions, and other treatment in the VA healthcare system,[5] an integrated national healthcare system for veterans. The VA healthcare system includes 1,380 health care facilities throughout the United States and over 9.1 million veterans are enrolled in the VA health care program.[6] The VA encourages members to sign up for Medicare, as well, because the additional coverage that Medicare provides broadens the range of options for veterans to receive care outside of the VA system.[7]

When the Medicare program was created in 1965, policymakers included a provision in the Social Security Act that would prohibit the VHA from charging Medicare for reimbursement for health care and services provided to veterans who were enrolled.[8] In 1997, when options for Medicare policies were amended to include Medicare Part C (now known as "Medicare Advantage" (MA)),[9] the policy created a loophole, where the statutory prohibition made it probable that taxpayers would pay twice for health services provided by the VA to veterans who are also enrolled in an MA plan.[10]

The Centers for Medicare & Medicaid Services (CMS) administers the traditional Medicare program (Part A and Part B), making payments to providers directly.[11] Medicare Advantage (MA)

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(Part C) and Medicare prescription drug plans (Part D), however, are administered by private insurers. For MA plans, the federal government pays insurers a lump sum monthly capitated payment per enrollee, irrespective of whether the enrollee received medical care paid out of the MA plan.[12] The monthly capitated payment amount is risk-adjusted to reflect anticipated cost of providing care to an individual enrollee, given location, the individual's health conditions, and cost of administering traditional Medicare plans in the area, but does not reflect actual use of the MA plan.[13]

Loophole Allows MA Payment

For dual-enrollees in VHA health benefits and MA plans, taxpayers essentially pay twice for the same person to receive healthcare – once for the capitated payment to their MA insurer and once for the VA to provide the healthcare services the veteran is actually receiving.[14] Many veterans choose to receive all or most of their health care from the VA health system, in which cases Medicare provides little or none of their health care.[15] With MA plans, this means that the insurer is paid the same monthly fee without the expense of paying for the cost of the health expenses, since the veteran is receiving healthcare from a provider that cannot bill the MA plan.

Some MA insurers create plans that openly court veterans, which may include elements like cash rebates and branded plan names (such as the Humana Honor plan, the Aetna Eagle plan and UnitedHealth Group's Patriot plan) and cash rebates to induce veterans to sign up.[16] Dual-enrollees in high-veteran MA plans (where over 20% of enrollees are veterans) are more likely to receive VHA-funded care and more likely *not* to incur Medicare services paid for by their MA plans than enrollees on other MA plans.[17] A recent report from *Health Affairs*, "Medicare Advantage Plans With High Numbers Of Veterans: Enrollment, Utilization, And Potential Wasteful Spending" highlights this issue.[18]

About one in five dual-enrollees in high-veteran MA plans between 2016 and 2022 did not incur <u>any</u> Medicare services paid by MA within a given year, which is 2.5 times the rate of dual-enrollees in other MA plans and 5.7 times that of general users of MA plans.[19]

"The growth of high-veteran MA plans underscores the necessity to mitigate potentially wasteful payments and enhance care coordination between CMS and the VHA, especially amid ongoing enrollment growth in MA plans," says Yanlei Ma, a research associate in the Harvard Chan School of Public Health in the Department of Health Policy and Management said about the report.[20]

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Many veterans who are dual-enrolled in VHA health benefits and MA plans are happy receiving most of their healthcare from the VA, with the MA plans serving as backup for non-covered services or out-of-VA network care. *The Wall Street Journal* interviewed dual-enrolled veterans for a December 2024 article, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing."[21]

Bruce Kitt, an Air Force veteran who served in Thailand during the Vietnam War, said that he gets almost all of his healthcare through the Minneapolis VA Medical Center, outside of the Medicare system. ""I don't think I've used my Medicare in years." … "I'm pretty happy with the VA." … "I look at the Medicare plan as backup,"" he said to the *Journal*.[22]

Kitt is enrolled in an MA plan administered by an affiliate of CVS Health's Aetna unit, which pays him a $100 monthly cash-like rebate as an incentive to keep him enrolled in the plan. The plan pays essentially no healthcare costs, while the government paid the plan $6,000 to cover him in 2022.[23] His situation is by no means singular. CMS paid more than $1.32 billion to MA plans for VHA enrollees who did not use any Medicare services in 2020.[24] From 2018 through 2021, the federal government paid insurers an estimated $44 billion to cover dual-enrollees through CMS, while the VA was spending an additional $46 billion on the same group's medical care in the VA health system.[25] The number of veterans enrolled in MA plans has been increasing at a similar rate to non-veteran MA enrollees – the number of dual enrollees increased by 63% from 2011 to 2020.[26]

While the loophole that allows MA insurers to be paid for care that the VHA provided may have been created accidentally, MA insurers have not failed to take advantage of it. *The Wall Street Journal* analysis suggests that the government is overpaying insurers for plans that target veterans.[27] In MA plans where the majority of members are dual-enrolled veterans, many veterans use few Medicare-covered services but are heavy users of VA health services.[28]

The Wall Street Journal investigation found that, of the MA plans reviewed,

- "[M]embers of the veteran-majority plans used far fewer medical services than members of the other plans: They had 53% as many surgeries, 50% as many doctor visits and 55% as many radiology scans. They also spent fewer days in the hospital—about 72% as many as members of other plans."[29]

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- "The insurers charged the government a total of about $1.7 billion in 2021 for the veteran-majority plans. On a per-member basis, that came to 77% as much as other plans in the same geographic areas. The lower price, insurers say, reflects the lower cost of caring for veterans who are getting a portion of their care from the VA."[30]
- "While members of veteran-majority plans used few Medicare-covered services, many were heavy users of VA health services, according to the VA data provided by Trivedi. The VA system spent an average of about $17,000 caring for veterans in those plans in 2021, not including pharmacy spending, about 30% more than the typical veteran," according to an analysis by researchers from Brown University and the Providence Veterans Affairs Medical Center.[31]
- "Total spending on all Medicare Advantage members amounted to 17% of the VA's $100 billion healthcare expenditures in 2021, the VA data show."[32]
- "As of this year, 88% of plans marketed to veterans paid [cash-like rebates that encourage people to enroll and stay enrolled], compared with 11.7% of other plans. On average, members of veteran-branded plans were eligible for about $1,000 a year in such rebates, a Journal analysis of benefit and enrollment data shows."[33]

One of the VA's stated reasons for recommending that veterans enroll in Medicare is because of variable funding for VA health care and possible loss of coverage for low-priority groups.[34] The more money is spent paying twice for the same healthcare, the fewer veterans will be able to receive VA health benefits. Given the increased prominence and cost of MA plans and the prevalence of predatory plans recruiting veterans for enrollment, it is vitally important that Congress create a solution that closes this loophole.[35]

GUARD Veterans' Health Care Act

A possible solution to the statutory loophole described above would be to authorize the Department of Veterans' Affairs to pursue reimbursement from third-party MA plans and MA prescription drug plans (MAPDs) offered under Part C, and stand-alone prescription drug plans (PDPs) offered under Part D, for health care, services, and pharmaceutical treatments provided by the VA healthcare system that would be reimbursable, but for the statutory prohibition.

A bipartisan coalition of U.S. Representatives and Senators introduced the "Guarantee Utilization of All Reimbursements for Delivery of (GUARD) Veterans' Health Care Act" on June

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23, 2025.[36] The GUARD Veterans' Health Care Act would close the loophole and give the Department of Veterans Affairs authority to recover reimbursement and reduce wasteful and unnecessary spending to private insurers who profit from MA plans targeted to veterans.[37] Researchers affiliated with the Center for Advancing Health Policy Through Research (CAHPR) at the Brown University School of Public estimate that this Act will save taxpayers $357.7 billion over the next 10 years by closing the loophole and removing the obligation for taxpayers to pay twice for some health care for veterans.[38]

""These wasted double payments mean veterans are missing out on critical resources that could be reinvested in delivering more and better care at the VA, such as hiring more providers, purchasing medical equipment, surgical supplies, and devices, and expanding available services at VA clinics," said Rep. Doggett (a sponsor of the bill)."[39]

"For too long, private insurers have shaken down the government and taxpayers for care veterans receive at VA hospitals," said Sen. Blumenthal, a cosponsor. "This legislation gives VA the power to claw back these payments and use those funds to provide more quality health care to those who served."[40]

If the private insurers offering MA plans to veterans were offering the same plan through a younger veteran's employer or the ACA marketplace, the VA could bill that plan for reimbursement just like a typical doctor or hospital would bill an insurer.[41] In 2024, the VA collected $3.7 billion from non-Medicare insurers for just such claims.[42] Similarly, if a non-VA hospital provides a veteran with healthcare, they could bill the veteran's MA plan like they would for the same plan if the enrollee were not a veteran.

Conclusion

The 1965 amendment to the Social Security Act created a loophole that inadvertently costs the federal government and taxpayers tens of billions of dollars in overspending to private MA and PDP insurers. The payments to insurers also lead to the VA having less available funding in their budget to provide more healthcare coverage to veterans who would otherwise be eligible. Meanwhile, private insurers walk away with billions of dollars in profits. The GUARD Veterans' Health Care Act is a common-sense proposal with the potential to save hundreds of billions of dollars for spending on veterans' healthcare.[43] With overspending on MA plans expected to increase,[44] it is essential and timely to close this loophole.

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[1] Social Security Act § 1862, 42 U.S.C. 1395y(a)(3)
[2] JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024); See U.S. Representative Lloyd Doggett Press Release, "Bipartisan, Bicameral Health Leaders Introduce Bill to Strengthen Veteran Health Care & Stop Waste," (Jun. 23, 2025); See, generally, U.S. Department of Veterans Affairs, VA Health Care and Other Insurance, (accessed Jul. 21, 2025).
[3] U.S. Department of Veterans Affairs, Eligibility for VA health care, (accessed Jul. 21, 2025): Eligibility for VA health benefits are determined by military service history, discharge status, income, and whether you have had a service-connected disability.; See also U.S. Department of Veterans Affairs, VA Eligibility Facts and Fiction, (accessed Jul. 21, 2025; See U.S. Department of Veterans Affairs, About VA health benefits, (accessed Jul. 21, 2025) for a non-inclusive list of health care and services covered by VA health benefits plans and factors determining individual coverage. ("The full list of your covered benefits depends on: Your priority group, [t]he advice of your VA primary care provider (your main doctor, nurse practitioner, or physician's assistant), and [t]he medical standards for treating any health conditions you may have[.]")
[4] U.S. Department of Veterans Affairs, About VA health benefits, (accessed Jul. 21, 2025).
[5] U.S. Department of Veterans Affairs, Where you'll go for care, (accessed Jul. 21, 2025).
[6] U.S. Department of Veterans Affairs, Veterans Health Administration, (accessed Jul. 21, 2025): "The Veterans Health Administration is America's largest integrated health care system, providing care at 1,380 health care facilities, including 170 medical centers and 1,193 outpatient sites of care of varying complexity (VHA outpatient clinics), serving 9.1 million enrolled Veterans each year."
[7] U.S. Department of Veterans Affairs, VA Health Care and Other Insurance, (accessed Jul. 21, 2025): The VA encourages veterans to enroll in Medicare as soon as they can because of expanded range coverage options in Medicare plans, including non-VA hospitals and doctors, if necessary; variable funding for VA health care and possible loss of coverage for low-priority groups; potential penalties for late Medicare enrollment if they sign up after they are eligible; and access to prescription drug coverage for prescriptions issued by non-VA doctors and/or at local non-VA pharmacies.
[8] Social Security Act § 1862, 42 U.S.C. 1395y(a)(3) : (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—
(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1861(aa)(1), in the case of Federally qualified health center services, as defined in section 1861(aa)(3), in the case of services for which payment may be made under section 1880(e), and in such other cases as the Secretary may specify".
[9] Center for Medicare Rights, "Medicare Advantage History: Legislative Milestones," (Jul. 17, 2023); See, generally Center for Medicare Advocacy, Medicare Advantage, "What is Medicare Advantage?" (accessed Jul. 21, 2025.
[10] JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024).
[11] This may be referred to as a "value-based care" or "alternative payment model" or a "fee-for-service" (FFS) model. See, AMA, What is value-based care? (accessed Jul. 31, 2025), which explains that "[v]alue-based care arrangements tie payment amounts for services provided to patients to the results that are delivered, such as the quality, equity and cost of care. By aligning incentives and payment, this approach can potentially result in more evidence-based, preventive and equitable whole-person care." For further explanation of FFS, see Healthline, "Getting to Know Medicare Fee-for-Service (FFS) Plans," (May 20, 2025).

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[12] Better Medicare Alliance, "Understanding Medicare Advantage Payment & Policy Recommendations," (Sep. 2018); Centers for Medicare & Medicaid Services, "Capitation and Pre-payment," accessed Jul. 31, 2025).
[13] Better Medicare Alliance, "Medicare Advantage Payment Structure," (Jan. 2021).
[14] JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024).
[15] Health Affairs, "Medicare Advantage Plans With High Numbers Of Veterans: Enrollment, Utilization, And Potential Wasteful Spending," (Nov. 2024): "Many veterans choose to receive all or most of their health care from the VA health system, in which cases Medicare covers little or none of their health care."
[16] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[17] Health Affairs, "Medicare Advantage Plans With High Numbers Of Veterans: Enrollment, Utilization, And Potential Wasteful Spending," (Nov. 2024).
[18] *Id.*
[19] *Id.*
[20] Harvard T.H. Chan School of Public Health, "Federal government may be overpaying for veterans' health care in Medicare Advantage plans," (Nov. 4, 2024), referencing Health Affairs, "Medicare Advantage Plans With High Numbers Of Veterans: Enrollment, Utilization, And Potential Wasteful Spending," (Nov. 2024).
[21] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[22] *Id.*
[23] *Id.*
[24] Health Affairs, "Medicare Advantage Plans With High Numbers Of Veterans: Enrollment, Utilization, And Potential Wasteful Spending," (Nov. 2024).
[25] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[26] JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024): "The number of VHA/MA dual enrollees who used VHA services increased by 63%, from 634,470 (14% of all 4,517,074 VHA/Medicare enrollees) in 2011 to 1,033,643 in 2020 (21.2% of all 4,884,505 VHA/Medicare enrollees)."
[27] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[28] JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024).
[29] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[30] *Id*.
[31] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024), citing JAMA Network, "Spending by the Veterans Health Administration for Medicare Advantage Dual Enrollees, 2011-2020," (Oct. 2, 2024).
[32] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[33] *Id*.
[34] U.S. Department of Veterans Administration, VA Health Care and Other Insurance, (accessed Jul. 21, 2025).

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[35] KFF, "Medicare Advantage in 2025: Enrollment Update and Key Trends," (Jul. 28, 2025): "Medicare payments to private plans are higher than spending for similar beneficiaries in traditional Medicare. In 2025, payments are 20% more per person, which translates into an additional $84 billion in federal spending this year, substantially larger than the $18 billion in higher spending a decade ago when about one-third of eligible beneficiaries were enrolled in a Medicare Advantage plan," citing MedPAC, "March 2025 Report to Congress, Chapter 11: the Medicare Advantage program: Status report,"(Mar. 2025).
[36] See U.S. Representative Lloyd Doggett Press Release, "Bipartisan, Bicameral Health Leaders Introduce Bill to Strengthen Veteran Health Care & Stop Waste," (Jun. 23, 2025).
[37] GUARD Veterans' Health Care Act, H.R. 4077, 119th Cong. (2025) available at https://www.congress.gov/bill/119th-congress/house-bill/4077/text.
[38] Letter from David Meyers, Associate Director, CAHPR, and Andrew Ryan, Director, CAHPR, to Hon. Elizabeth Warren, U.S. Senate, and Hon. Lloyd Doggett, U.S. House of Representatives. (Jun. 20, 2025).
[39] U.S. Representative Lloyd Doggett Press Release, "Bipartisan, Bicameral Health Leaders Introduce Bill to Strengthen Veteran Health Care & Stop Waste," (Jun. 23, 2025).
[40] *Id.*
[41] U.S. Department of Veterans Administration, VA Health Care and Other Insurance, (accessed Jul. 21, 2025): "[W]e have to bill your private health insurance provider for any care, supplies, or medicine we provide to treat your non-service-connected conditions (illnesses or injuries that aren't related to your military service). We don't bill Medicare or Medicaid, but we may bill Medicare supplemental health insurance for covered services."
[42] The Wall Street Journal, "Insurers Collected Billions From Medicare for Veterans Who Cost Them Almost Nothing," (Dec. 2, 2024).
[43] Letter from David Meyers, Associate Director, CAHPR, and Andrew Ryan, Director, CAHPR, to Hon. Elizabeth Warren, U.S. Senate, and Hon. Lloyd Doggett, U.S. House of Representatives. (Jun. 20, 2025).
[44] Healthcare Dive, "MA Spending to outstrip traditional Medicare by $88B this year: MedPAC," (Jan. 16, 2024); Committee for a Responsible Federal Budget, "Medicare Advantage Will Be Overpaid by $1.2 Trillion," (Mar. 26, 2025), citing MedPAC, "March 2025 Report to the Congress: Medicare Payment Policy," (Mar. 13, 2025): "The Medicare Payment Advisory Commission (MedPAC) released their latest status report on the Medicare Advantage (MA) program last week. Based on this information, we estimate that MA will be overpaid by $1.2 trillion between 2025-2034. As MA enrollment continues to grow, policymakers should right-size payments to improve Medicare's Hospital Insurance (HI) Trust Fund and the programs overall fiscal outlook."

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