

Retiree Auto Enrollment in Medicare Advantage: Not Increasing, Still Problematic

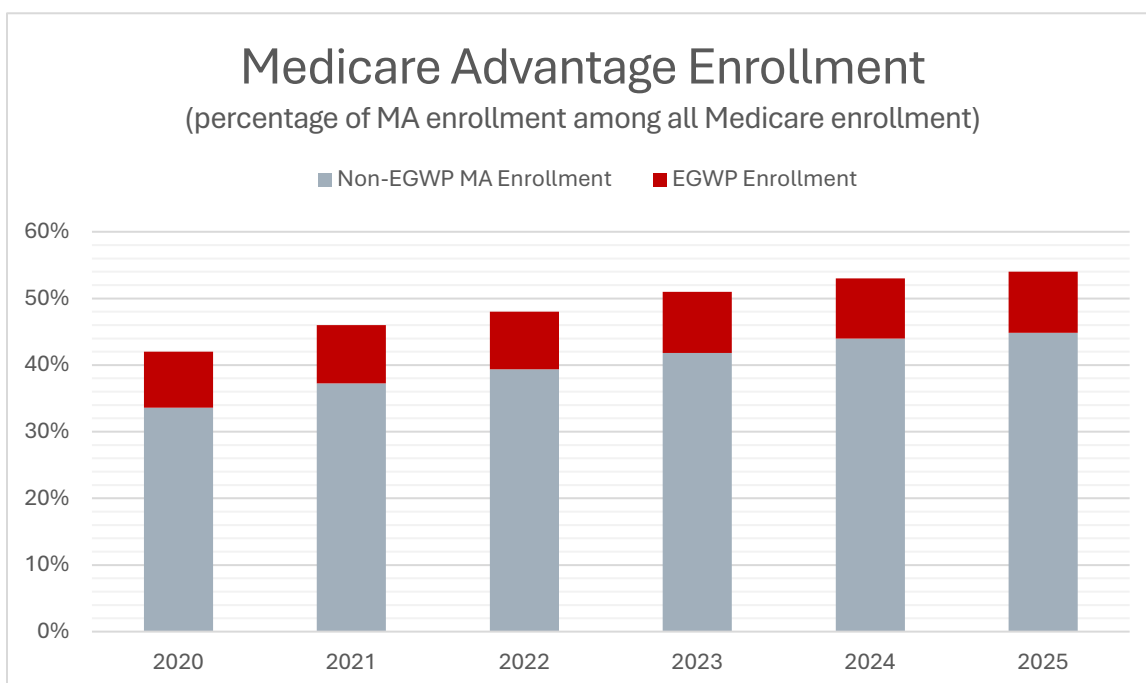
By Eric Krupa

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Introduction

When an employer or union contracts for a Medicare Advantage plan for its retirees, Medicare allows them to enroll the retirees automatically. In 2021, the Center for Medicare Advocacy wrote about the increasing automatic enrollment of retired Medicare beneficiaries into Medicare Advantage plans by their former employers or unions in place of traditional (or original) Medicare.¹ These plans, known as EGWPs (Employer Group Waiver Plans), were the subject of increasing scrutiny, including from New York City municipal retirees who were contesting the City's adoption of one. We analyzed the legal authority for these plans and how automatic enrollment is contrary to the Medicare statute's protection of choice. We are now exploring how this enrollment trend has progressed and how it continues to affect beneficiaries.

Medicare Advantage is the New Normal While Retiree Benefits Dwindle



Since 2021, Medicare Advantage enrollment generally has continued to increase, rising from 46% of total Medicare enrollment in 2021 to 54% in 2025.² 2023 marked the critical shift from majority enrollment in traditional Medicare to majority enrollment in Medicare Advantage.³

This steady increase in Medicare Advantage enrollment cannot be attributed to EGWPs. The number of beneficiaries enrolled in EGWPs has remained relatively constant since 2021.⁴ As you can see from the above graph, non-EGWP MA enrollment has been rising each year.⁵

While 19% of MA enrollees were in EGWPs in 2021, only 17% of MA enrollees were in EGWPs in 2025.⁶ Special needs plans (SNPs)⁷, on the other hand, now make up a significantly higher percentage of MA enrollment, rising from 15% of MA enrollment in 2021 to 21% in 2025.⁸ Aggressive marketing strategies and lack of unbiased advising options have also pulled beneficiaries away from traditional Medicare.⁹

A trend possibly related to the static percentage of EGWP enrollment over the past few years is the shrinking number of large employers that offer retiree health benefits. Among large employers, the share offering retiree health benefits to active workers has dropped from 66% in 1988 to 24% in 2024.¹⁰ Going forward, there is simply projected to be less employer and union-sponsored health coverage of any kind, Medicare Advantage or otherwise. Among the retiree benefits offered by large employers, as of 2024, more than half offer benefits through a contract with an MA plan.¹¹

The Law Remains the Same, but Some Local Pushback has Succeeded

There have been no changes to the statutory or regulatory authority allowing automatic enrollment of beneficiaries into EGWPs.¹² The process for automatic enrollment was not specifically authorized by Congress. Rather, in December 2000, a provision was added to the Medicare Act, which gave the Secretary of Health and Human Services the broad authority to “waive or modify requirements that hinder the design of, the offering of, or the enrollment in [EGWPs].”¹³ This provision paved the way for the creation of the automatic enrollment process whereby employers or unions could automatically enroll their retirees into an MA plan so long as they provide advance notice and a mechanism to opt out. This process is outlined in sub-regulatory guidance, which was implemented without the notice and comment period required of federal regulations.¹⁴ The guidance states, in relevant part, that group enrollment may occur “without obtaining a paper MA enrollment request form from each individual” and that “[t]he enrollment requests reported to the MA organization by the employer/union will reflect the

choice of retiree coverage individuals made using their employer's or union's process for selecting a health plan.”¹⁵

Despite this process, the Medicare Act continues to contain language indicating that automatic enrollment into MA plans was not originally intended by Congress. Medicare Advantage, when introduced in 1997, was known as “Medicare+Choice” and was designed to give beneficiaries the option of electing privatized Medicare in place of traditional Medicare. When former President Clinton introduced the legislation, he described the intention to “give beneficiaries more informed choices among competing health plans.”¹⁶ The Medicare Act continues to state that beneficiaries are “entitled to elect” to receive benefits through an MA plan.¹⁷ The statute goes on to say that individuals who fail to make an election for an MA plan during their initial election period are “deemed to have chosen” traditional Medicare.^{18,19}

Seemingly because of the Secretary's broad waiver authority pursuant to the language added to the Medicare Act in 2000, there has been no successful legal challenge to automatic EGWP enrollment based on the text of the statute. There has been, however, successful local pushback, such as New York City municipal retirees' defense against the switch to an EGWP.

In 2021, then New York City Mayor Bill de Blasio announced the City's intention to enroll roughly 250,000 municipal retirees into an EGWP with the goal of saving millions of dollars.²⁰ Municipal retirees organized in opposition and filed a lawsuit seeking to enjoin the City from making the switch. The lawsuit alleged, in part, that the City repeatedly promised its workers that it would provide and pay for a Medigap plan upon retirement and that the switch to an EGWP would cause injury due to higher copays, prior authorization requirements, and limited provider networks.²¹ The retirees claimed this broken promise entitled them to relief under the doctrine of promissory estoppel.²² While the retirees succeeded on this claim in trial court and on the first level of appeal, years later, into the Eric Adams administration, the State of New York Court of Appeals ruled in favor of the City, finding that no clear and unambiguous promise was made as required for a successful promissory estoppel claim.²³ The decision was issued on June 18, 2025.²⁴ Two days later, on June 20, amid a campaign for reelection, then Mayor Adams released a statement saying that the switch would not go forward despite the Court of Appeals decision: “We have informed union leadership that we are pursuing other avenues for improving health care for city workers that will provide even better outcomes.”²⁵ Current Mayor Zohran Mamdani campaigned on a promise to reject Medicare Advantage.²⁶

Other examples of local pushback come from Delaware, Upstate New York, and Connecticut. Delaware, like New York City, saw a group of state retirees file a lawsuit in state court to block automatic enrollment into an EGWP, alleging that the hasty switch violated Delaware's Administrative Procedures Act.²⁷ The retirees were awarded a stay, which gave them enough time to advocate for and receive legislative protections against automatic enrollment.²⁸ In Cortland County New York, a local retired attorney gathered plaintiffs and filed a lawsuit pro bono, which gave the county pause, leading to the rescission of the plan to adopt an EGWP.²⁹ In Connecticut, state retirees were automatically enrolled in an EGWP in 2018.³⁰ It was estimated the plan saved the state nearly \$1.7 billion in its first five years of existence.³¹ Nonetheless, retirees continue to fight for protections against the harm caused by their enrollment, including care denials and network restrictions.³² As a result of this advocacy, the state is now offering a transfer program back to traditional Medicare for those unable to get appropriate care through the EGWP.³³

How EGWP Enrollees are Faring

The Center for Medicare Advocacy continues to serve beneficiaries with all types of Medicare coverage. We take calls and emails from beneficiaries and their family members from all over the country experiencing barriers to coverage. Complaints from EGWP enrollees tend to mirror complaints from other MA enrollees, e.g., "my MA plan denied coverage despite a doctor's order" and "an in-network provider won't treat me because of my MA plan." Though, EGWP enrollees have the additional complaint that they did not choose their plan and that they have no viable way to switch back to traditional Medicare.

MA plans, including EGWPs, can deny coverage despite doctors' orders and create an additional administrative burden for certain providers through what is known as utilization management. Utilization management includes prior authorization requirements and concurrent review of ongoing coverage. For example, someone enrolled in an MA plan, who needs rehabilitation in a skilled nursing facility following hospitalization, can face barriers to coverage that are not present for traditional Medicare beneficiaries. Before arriving at the skilled nursing facility, the beneficiary, likely through the hospital, will need to request prior authorization. If approved, once at the facility, the MA plan will soon begin requesting records and information from the facility to determine the appropriateness of continued coverage. Even if the treaters at the facility believe continued care is necessary, the MA plan can require the facility to issue a coverage termination notice. Daily, we hear from beneficiaries in this scenario or in other care settings, confused and frustrated that their injury or illness cannot be treated as recommended

by their doctor. Others are confused and frustrated that providers are turning them down simply because the administrative burden of dealing with their MA plan is too unpredictable and/or cumbersome.

Specific to EGWPs, we also regularly hear from beneficiaries inquiring about alternative enrollment options. Traditional Medicare is made more affordable for many through purchase of supplemental insurance, *i.e.*, Medigap insurance, which covers some of Medicare's cost-sharing. Without a Medigap plan, traditional Medicare enrollees may be liable for, on average, 20% of covered medical expenses. Unfortunately, federal law does not protect the right to purchase a Medigap plan beyond the first six months someone age 65 or over is first enrolled in Parts A and B. This means, someone who has been enrolled in an EGWP for longer than this period, who wishes to switch to traditional Medicare, can be denied Medigap coverage due to a pre-existing condition. Only four states have laws preventing these enrollment denials. So, even if beneficiaries are willing to forego their employer or union-sponsored coverage, they may not have a remotely affordable option.

Obviously not all EGWP enrollees are dissatisfied with their coverage. Those who are satisfied tend not to contact us. However, the volume and geographic range of inquiries we receive from dissatisfied beneficiaries indicates systemic issues. When beneficiaries are enrolled in these plans automatically, and that automatic enrollment is antithetical to the principles upon which Medicare Advantage was authorized (*i.e.*, competition and choice), we understand the continued frustration.

¹ *Retiree Auto Enrollment in Medicare Advantage Plans – Choice is Under Threat*, CENTER FOR MEDICARE ADVOCACY (October 14, 2021), available at <https://medicareadvocacy.org/wp-content/uploads/2021/10/Issue-Brief-MA-Auto-Enrollment.pdf>.

² *Medicare Advantage in 2025: Enrollment Update and Key Trends*, KAISER FAMILY FOUNDATION (July 28, 2025), available at <https://www.kff.org/medicare/medicare-advantage-enrollment-update-and-key-trends/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ SNPs provide benefits to people with specific severe and chronic diseases, certain health care needs, or who also have Medicaid.

⁸ *Id.*

⁹ *Marketing Medicare Advantage and Part D Plans: Regulation and Recent Legal Challenges*, CENTER FOR MEDICARE ADVOCACY (March 27, 2025), available at <https://medicareadvocacy.org/wp-content/uploads/2025/03/2025-CMA-Issue-Brief-Marketing-MA-and-Part-D-Plans.pdf>.

¹⁰ *Medicare Advantage Has Become More Popular Among the Shrinking Share of Employers That Offer Retiree Health Benefits*, KAISER FAMILY FOUNDATION (November 18, 2024), available at <https://www.kff.org/medicare/medicare-advantage-has-become-more-popular-among-the-shrinking-share-of-employers-that-offer-retiree-health-benefits/>.

¹¹ *Id.*

¹² One question ripe for additional research—that may influence future policy decisions concerning EGWPs—is whether EGWPs are shifting costs from employers to the federal government. Some are beginning to pose this question, but conclusions have not yet been posited. See, e.g., *Medicare Advantage Employer Group Waiver Plans*, URBAN INSTITUTE (January 2024), available at <https://www.urban.org/sites/default/files/2024-01/Medicare%20Advantage%20Employer%20Group%20Waiver%20Plans.pdf>.

¹³ 42 U.S.C. § 1395w-27

¹⁴ Medicare Managed Care Manual, Ch. 2, §§ 20.3.1 and 20.3.3, available at <https://www.cms.gov/files/document/cy-2024-ma-enrollment-and-disenrollment-guidance.pdf>.

¹⁵ *Id.*

¹⁶ 1997 U.S.C.C.A.N. 677-1, 1997 WL 806821 (Leg.Hist.)

¹⁷ 42 U.S.C. § 1395w-21(a)(1)

¹⁸ 42 U.S.C. § 1395w-21(c)(3)(A)(i)

¹⁹ Another fact highlighting how EGWPs are incongruous with MA as broadly designed is that EGWPs are included in the MA Quality Bonus System (QBP). The QBP provides extra payments to MA plans based on performance metrics, including disenrollment rates. The inclusion of EGWPs makes little sense given restrictions on beneficiary choice. *Employer Plans in Medicare Advantage: A Flaw in the Quality Bonus System*, THE COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (March 5, 2024), available at <https://www.crfb.org/papers/employer-plans-medicare-advantage-flaw-quality-bonus-system>.

²⁰ *Stop the Medicare bait-and-switch: NYC is posed to harm its retirees*, N.Y. DAILY NEWS (August 13, 2021), available at <https://www.nydailynews.com/opinion/ny-oped-stop-the-medicare-bait-and-switch-nyc-retirees-20210813-tjvtnjf3vbaermqb4x32cbw63e-story.html>.

²¹ [Court of Appeals decision on Medicare Advantage \(Bentkowski v. City of New York\) | DocumentCloud](#)

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Mayor Adams' Statement on Future of Medicare Advantage*, OFFICE OF THE MAYOR (June 20, 2025), available at <https://www.nyc.gov/mayors-office/news/2025/06/mayor-adams-on-future-medicare-advantage>.

²⁶ *Mamdani splits from union that endorsed him over Medicare deal*, THE CITY (June 12, 2025), available at <https://www.thecity.nyc/newsletter/mamdani-splits-from-union-that-endorsed-him-over-medicare-deal/>

²⁷ RISE DELAWARE, available at <https://www.risede.com/RD-legal.html>.

²⁸ *Id.*

²⁹ *How Upstate Retirees Fought Privatized Health Care and Won*, NEW YORK FOCUS (July 9, 2024), available at <https://nysfocus.com/2024/07/09/how-upstate-retirees-fought-privatized-healthcare-and-won>.

³⁰ *CT state retirees want more options than Medicare Advantage*, CT MIRROR (August 14, 2025), available at <https://ctmirror.org/2025/08/14/medicare-advantage-plans-ct-state-retirees/>,

³¹ *Id.*

³² *Id.*

³³ *Id.*