



MedicareAdvocacy.org



December 7, 2023

By Email

Chiquita Brooks-LaSure, Administrator
Meena Seshamani, Director, Center for Medicare
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

By Email

Lina Khan, Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: URGENT: Misleading Advertising by Medicare Advantage Plans to Medicaid/Medicare Enrollees; Request for Immediate Relief Against United Healthcare; Broader Nationwide Investigation and Relief Needed

Dear Administrator Brooks-LaSure, Director Seshamani and Chair Khan:

We represent people with disabilities and older adults enrolled in Medicare and Medicaid nationally and in Connecticut. We write to request immediate intervention regarding misleading advertising being directed at low-income older adults and disabled individuals in Connecticut who are dually eligible for Medicare and Medicaid, to address the advertising being used by United Healthcare to

fraudulently induce these vulnerable individuals to sign up with their Medicare Advantage plan, causing significant harm to their access to essential health care.

First, we note that a higher and higher percentage of people with Medicare are being persuaded to move to Medicare Advantage (MA) plans in part through the sponsoring companies' offering extra benefits not covered under the traditional Medicare program but also in part through misleading advertising. While these plans do in some cases provide small additional benefits not covered by traditional Medicare, such as a limited amount of coverage for dental services, the advertising invariably fails to tell the targets of this advertising what these individuals **inherently lose** through signing up with their plans to get these small benefits: a substantially smaller network of providers than under traditional Medicare and excessive prior authorization relative to traditional Medicare, making access difficult particularly for expensive kinds of health care. *See, e.g., Report of HHS Inspector General, Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care*, dated April 2022 (available at [Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care" \(OEI-09-18-00260\) \(hhs.gov\)](https://www.oig.hhs.gov/oei/oei-09-18-00260)). Not being told the downsides of choosing one of these privatized plans, they are led to believe there are none.

Second, as problematic as this is for anyone with Medicare, even the benefit of "extras" rapidly disappears when the individual also has Medicaid as well as Medicare. In Connecticut, for example, all individuals with full-benefit Medicaid are entitled to unlimited dental services without hard financial caps, routine eye examinations and a new pair of glasses at least once every two years, as well as unlimited non-emergency medical transportation (NEMT) to get to and from any medical appointments covered under the Medicaid program (or jointly under the Medicare and Medicaid programs). There also are **no copays** in the CT Medicaid program for these or any other health care services. And there are **no premiums** for Medicaid enrollees in Connecticut (including under "HUSKY C," the program which all dual eligibles are assigned to), and the **Medicare** premiums and copays are all covered for them under the Medicare Savings Program.

The promise of these “extra” health benefits induces dually eligible individuals to enroll, when in fact these benefits are not extra since they are *already entitled* to these benefits under Medicaid. At the same time, enrollment will likely lead to disruptions and denials of care due to new prior authorization requirements and the more limited network of providers under the MA plan, under which freedom of choice of providers under both Medicare and Medicaid is severely compromised for any types of health care covered under the MA plan (they can only go to a provider enrolled in the MA plan).

Third, with this background in mind, we note that, on several days over the last two weeks (at least 11/26, 11/30, and 12/2) United Healthcare has taken out full page or half page ads in the front section of the primary newspaper in the state, the *Hartford Courant*, specifically targeted at getting dual eligible individuals to sign up for their MA plan. These ads are misleading in several material ways, as set forth below. (A copy of one of the full-page ads, which ran on November 30, is attached, as is a half-page one from December 1st.)

The 11/30 ad says it comes from the “UnitedHealthcare Dual Complete” plan, and, in very large, boldface type, states:

Eligible for Medicare and Medicaid? You could get more with UnitedHealthcare.

The ad then states:

If you’re eligible for Medicare and Medicaid, take advantage of your chance to get more benefits than Original Medicare, all for a \$0 monthly premium.

The ad then lists those supposed extra health care benefits, stating, with relevant icons, as follows:

- \$130 credit every month to pay for healthy food, OTC products and utility bills
- \$2500 allowance for covered preventive and comprehensive dental services

- \$0 copay for 24 one-way rides to or from doctor visits or the pharmacy
- \$0 copay for a routine eye exam and lenses, plus \$300 allowance for eyewear

None of the listed benefits (in red) are extra benefits for **anyone** in the target readership group (CT individuals “Eligible for Medicare and Medicaid”), since they all are fully covered, beyond the limits stated here, under the full benefit CT Medicaid program and with no premiums or copays -- with the exception of the potential \$130 monthly credit for “healthy food”, OTC products and, if they have any such responsibilities, utilities. Unquestionably, this misleading advertising is intended to induce, and *has* induced, thousands if not tens of thousands of older adults and disabled low-income individuals we are charged with representing to sign up for United Healthcare’s plan, having been led to believe this means they can get *extra* health care benefits. And, because the advertisement does not mention either the limited network or the restrictive prior authorization rules applicable under United Healthcare’s plan compared with traditional Medicare plus Medicaid, these individuals have no idea that they are **giving up something valuable**.

Unfortunately, and not coincidentally, this barrage of ads has been run, and continues to be run, just before the 12/7/23 deadline to pick a Medicare plan. Consequently, there is very little time to correct the harmful results of this false advertising campaign by that deadline.

Accordingly, we urge you to immediately take the following action steps:

- Issue substantial fines against United Healthcare for their misleading advertising in CT;
- issue a ban on any further direct advertising by United Healthcare in CT
- require letters to go at United Healthcare’s expense to all dually eligible individuals in CT who chose their MA plan in this cycle and advise them that they may have received misleading advertising by this plan and that they may opt out of this plan and how to do so, despite the 12/7/23 close of the open enrollment period; and

- conduct other outreach to duals in CT generally advising them that the 12/7 deadline does not apply to them, and that they may opt out of an MA plan at any time.

In addition, even for people who are **not** dually eligible, all future advertising by United Healthcare directed at inducing individuals in CT to select an MA plan must, in the same size print as all other substantive information, advise that:

- the United Healthcare provider network is more limited than the comprehensive network available under traditional Medicare;
- prior authorization may be applied more extensively under their plan than in the traditional Medicare program;
- individuals can readily obtain information explaining what those additional restrictions are (which in fact must be readily available on United Healthcare’s MA website and through alternative formats); and
- individuals should thoroughly check what these differences are before making any enrollment choices.

Finally, because we have seen other similarly-misleading advertising in print and on local TV stations directed at dual eligibles, in CT and elsewhere, by multiple companies, we request that your agencies begin a **full-scale investigation of all print, electronic, televised and otherwise broadcasted advertising throughout the country, by any insurance companies offering MA plans, specifically directed at dual eligible individuals**, to see if they also are offering as “extra” benefits any health services already covered under the relevant state Medicaid plan (e.g., NEMT is a legal requirement for almost every Medicaid program). This investigation should also look at the MA plans’ ubiquitous use of cash offers to induce individuals to sign up for their plans, which practice, while not necessarily misleading, also is problematic.

If, after such a thorough investigation, such broader misrepresentations are found to exist, we urge you to issue the same kind of remedial relief as requested above with respect to United Healthcare, as broadly as the violations are found to exist, and to create a comprehensive monitoring and rapid response program going forward, as well as other corrective action steps as are deemed appropriate.

The unchecked misleading advertising inducing vulnerable disabled and older dual eligible individuals to sign up for these plans, which then significantly harms their access to essential health care, has gone on long enough. It is time to put an end to this widespread abusive corporate practice so that, at least by the beginning of the open enrollment period next year, **all** MA-sponsoring companies will be on notice that these deceptive practices driving up their enrollment numbers to increase profits will no longer be allowed, and that a rapid response enforcement mechanism will be in place to catch any violators and allow for timely sanctions and corrective action.

Thank you for your attention to this matter of critical concern to the many dual eligible individuals and other people with disabilities and older adults we represent. Please let us know if we can be of assistance in any way.

Respectfully yours,

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cc: U.S. Senator Richard Blumenthal
U.S. Senator Chris Murphy
U.S. Rep. Rosa DeLauro
U.S. Rep. John Larson
U.S. Rep. Joe Courtney
U.S. Rep. Jim Himes
U.S. Rep. Jahana Hayes
U.S. Dept. of Health and Human Services Secretary Xavier Becerra
CT Attorney General William Tong
CT Commissioner of Social Services Andrea Barton-Reeves



Eligible for Medicare and Medicaid? You could get more with UnitedHealthcare.

UnitedHealthcare® Medicare Advantage plans are there for what matters. If you're eligible for Medicare and Medicaid, take advantage of your chance to get more benefits than Original Medicare, all for a \$0 monthly premium.

Medicare Advantage plans from UnitedHealthcare may also include:



\$130 credit every month to pay for healthy food, OTC products and utility bills



\$0 copay for 24 one-way rides to or from doctor visits or the pharmacy



\$2,500 allowance for covered preventive and comprehensive dental services



\$0 copay for a routine eye exam and lenses, plus \$300 allowance for eyewear

Attend a Medicare presentation: Space is limited. RSVP today.

Learn about plan options in your area from a local licensed sales agent.

Bristol
Nov 30
3pm
 Bristol Senior Center
 240 Stafford Ave
Middletown
Dec 5
3pm
 Athenian Diner
 864 Washington St

New Britain
Dec 4
10am
 New Britain Public Library
 20 High St
Somers
Dec 5
10:30am
 Congregational Church
 599 Main St

Wethersfield
Dec 8
10am
 The Jones Group Insurance Agency
 7 Railroad Pl



All-in-one member ID

Use your UnitedHealthcare UCard® when you visit your provider, fill a prescription, shop with your earned rewards and more.

Get more of what matters

Annual enrollment ends December 7.
 Call UnitedHealthcare or go online today to enroll.

1-844-818-5766, TTY 711

8 a.m.-8 p.m., 7 days a week.

Se habla español.

Or visit EnrollUHCMedicare.com





MEDICA

\$0 copays on hundreds of prescription drugs

Eligible for Medicare and Medicaid? You could get more with UnitedHealthcare.

UnitedHealthcare® Medicare Advantage plans are there for what matters. If you're eligible for Medicare and Medicaid, take advantage of your chance to get more benefits than Original Medicare, all for a \$0 monthly premium.

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All-in-one member ID
Use your UnitedHealthcare UCard® when you visit your provider, fill a prescription, shop with your earned rewards and more.

MEDICARE

**Don't
delay**
Enroll by Dec. 7

Get more of what matters

Annual enrollment ends December 7.
Call UnitedHealthcare or go online today to enroll.

1-844-818-5766, TTY 711

8 a.m.–8 p.m., 7 days a week. Se habla español.

Or visit EnrollUHCMedicare.com anytime



\$0 premium for members with Extra Help (Low Income Subsidy). If your plan offers out-of-network dental coverage and you see an out-of-network dentist, you might be billed more.