



May 26, 2023

The Honorable Richard Blumenthal, Chair  
Committee on Homeland Security and  
Governmental Affairs  
Permanent Subcommittee on Investigations  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ron Johnson, Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
Permanent Subcommittee on Investigations  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Blumenthal and Ranking Member Johnson,

We write today to thank you for holding your May 17 hearing titled “Examining Health Care Denials and Delays in Medicare Advantage” and to urge you to continue your oversight of Medicare Advantage plans, particularly regarding their use of prior authorization and other utilization management tools that inappropriately delay and deny medically necessary care.

The Regulatory Relief Coalition (RRC), a group of national physician specialty organizations representing thousands of physicians throughout the United States, was established to advocate for regulatory burden reduction to ensure that health insurers’ policies are not a barrier to timely and equitable access to care for the patients our members serve. To this end, our coalition is advancing legislative and regulatory changes to ensure that Medicare Advantage (MA) plans serve our nation’s seniors.

In the 117<sup>th</sup> Congress, we were the driving force behind the *Improving Seniors’ Timely Access to Care Act* ([S. 3018/H.R. 3173](#)). This legislation would establish an electronic prior authorization (e-PA) program in Medicare Advantage (MA) and require MA plans to provide real-time decisions in response to requests for items and services that are routinely approved. Notably, the legislation was created with the basic policy proposition that Congress can and should ensure proper transparency and oversight of the MA program to protect our nation’s seniors. Therefore, the bill would also require MA plans to provide data about their use of prior authorization (PA) to the public.

More than [500 organizations](#) representing patients, health care physicians and other clinicians, the medical technology and biopharmaceutical industry, health plans, and other organizations endorsed the legislation. And last year, the House of Representatives unanimously passed this bipartisan legislation by voice vote. The bill finished the 117th Congress with 380 combined co-sponsors — 53 senators and 327 representatives. While the bill was not enacted into law last session, the RRC hopes this legislation will become law in the 118<sup>th</sup>.

The RRC is also working with the Centers for Medicare & Medicaid Services (CMS) in its critical work to establish regulations to improve prior authorization (PA) in MA. Fortunately, the *Improving Seniors’ Timely Access to Care Act* and two of the agency’s prior authorization rules ([one finalized](#) in April and goes into effect on Jan. 1, 2024, and [another](#) that CMS is finalizing) are closely aligned. Both the legislation and the rules acknowledge the following:

- PA can be misused or overused;
- PA creates considerable challenges for patients, physicians and other clinicians, and payers; and
- PA presents a serious health risk for patients when care is delayed.

The bill and the rules recognize that PA increases physician and payer burden due to inconsistent payer policies, presents serious physician workflow challenges and contributes to significant physician and other clinician burnout. These findings reflect those from a survey of RRC-member physicians, which found, among other things, that:

- Eighty-two percent of respondents state that PA always (37%) or often (45%) delays access to necessary care;
- Wait times can be lengthy, and for most physicians (74%), it takes between 2 to 14 days to obtain prior authorization, and for 15%, this process can take 15 to more than 31 days;
- PA causes patients to abandon treatment altogether, with 32% reporting that patients often abandon treatment and 50% reporting that patients sometimes abandon treatment;
- Overwhelmingly (87%), physicians report that PA has a significant (40%) or somewhat (47%) negative impact on patient clinical outcomes;
- The burden associated with PA for physicians and their staff is high or extremely high (92%); and
- Ultimately, most services are approved (71%), with one-third of physicians getting approved 90% or more of the time.

We appreciate that the *Improving Seniors’ Timely Access to Care Act* and CMS rules present similar solutions, including:

- Requiring MA plans to adopt e-PA;
- Ensuring MA plans to respond to PA requests within specific timeframes;
- Requiring public reporting on PA metrics, such as the number of delays, denials and appeals (in the aggregate and individual service level); and
- Allowing waivers or modifications of PA requirements based on physician performance.

The RRC applauds the committee for continuing to seek improvements in PA in MA through its continued oversight of the program. We call your attention to reports issued last year by the

[Office of the Inspector General \(OIG\)](#) and the [Government Accountability Office](#), raising significant concerns about PA in MA. At your hearing, the OIG confirmed what we’ve known for far too long — that MA plans sometimes delayed or denied access to medical care even though the care met Medicare coverage rules. The OIG also found that MA plans inappropriately applied restrictive coverage criteria despite the requirement that MA plans must provide the same level of coverage as traditional Medicare. Fortunately, the newly issued MA PA rules take steps to curb this unlawful behavior.

MA is growing exponentially, now insuring more than half of all Medicare beneficiaries. With more than [30 million](#) people enrolled in a MA plan, we welcome your efforts to ensure that Medicare fulfills the promise made to our seniors to receive timely access to care without unnecessary barriers and delays — whether they opt for MA or traditional Medicare.

The RRC looks forward to assisting you with this and other initiatives aimed at getting our patients the care they need when they need it. Please contact [Peggy Tighe@PowersLaw.com](mailto:Peggy.Tighe@PowersLaw.com).

Thank you for considering our views.

Sincerely,

RRC Members

American Academy of Family Physicians  
American Academy of Neurology  
American Academy of Ophthalmology  
American Academy of Physical Medicine and Rehabilitation  
American Association of Neurological Surgeons  
American Association of Orthopaedic Surgeons  
American College of Cardiology  
American College of Rheumatology  
American College of Surgeons  
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American Medical Rehabilitation Providers Association  
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