

United States Senate

WASHINGTON, DC 20510

March 30, 2026

The Honorable Mehmet Oz, M.D.
Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building,
200 Independence Ave., S.W.
Washington, DC 20001

Dear Administrator Oz:

We are pleased to see that the Centers for Medicare & Medicaid Services (CMS) has proposed a key provision of the *No Unreasonable Payments, Coding, or Diagnoses for the Elderly (No UPCODE) Act* to exclude diagnoses from unlinked chart review records from risk score calculations in the 2027 Medicare Advantage (MA) and Part D Advance Notice. While we hope to see this finalized, we believe the evidence requires Congress to pass the *No UPCODE Act* to truly address the persistent issue of risk score gaming and to curb abuses in coding intensity.

As you are already aware, health insurance companies engage in “upcoding,” which occurs when “unsupported diagnoses inflate risk-adjusted payments and drive improper payments in the MA program.”¹ According to the Medicare Payment Advisory Commission (MedPAC), in 2025, CMS was projected to overpay MA by \$40 billion or 10 percent due to “upcoding,” overstating the health differences between MA and fee-for-service enrollees.²

We were pleased to see that CMS has begun to address upcoding by proposing to exclude diagnoses submitted through chart review records that are not linked to a specific encounter record. As the Office of the Inspector General at the U.S. Department of Health and Human Services (HHS) found, unlinked chart reviews “resulted in an estimated \$6.7 billion in risk-adjusted payments for 2017.”³

However, diagnoses submitted through unlinked chart reviews are just one source of excess risk score growth that increases MA payments beyond beneficiaries’ true health status. Congress should do more to address upcoding, like directing HHS to exclude diagnoses collected from health risk assessments and all chart reviews. According to MedPAC, between 2020 and 2023, half of the higher coding intensity in MA was attributable to diagnoses collected using these

¹ Department of Health and Human Services - Office of Inspector General, *Medicare Advantage: Questionable Use of Health Risk Assessments Continues To Drive Up Payments to Plans by Billions*, OIG.HHS.gov (October 21, 2024), <https://oig.hhs.gov/reports/all/2024/medicare-advantage-questionable-use-of-health-risk-assessments-continues-to-drive-up-payments-to-plans-by-billions/>.

² Medicare Payment Advisory Commission, *Chapter 11 – The Medicare Advantage Program: Status Report*, MedPAC.gov (March 2025), https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_Ch11_MedPAC_Report_To_Congress_SEC.pdf.

³ Joanne M. Chiedi, *Billions in Estimated Medicare Advantage Payments From Chart Reviews Raise Concerns*, OIG.HHS.gov (December 2019), <https://oig.hhs.gov/documents/evaluation/2792/OEI-03-17-00470-Complete%20Report.pdf>.

tools.⁴ In addition, the *No UPCODE Act* proposes to exclude diagnoses from both unlinked and linked chart reviews, due to growing concerns that insurers may seek to recapture lost diagnoses by linking chart reviews to specific encounters, potentially dampening the effect of the proposed change to exclude diagnoses from unlinked chart reviews.

Additionally, Congress should direct HHS to modify the risk adjustment methodology to incorporate two years of diagnostic data rather than one year of data, in order to capture conditions that are not consistently reported year-to-year, such as underreported chronic conditions.

Finally, Congress should direct HHS to adjust payments based on the true coding pattern differences between MA and fee-for-service Medicare. MedPAC’s preliminary 2026 assessments finds that, net of the statutory minimum coding adjustment, higher MA coding intensity will increase payments to MA plans by 4% in 2026, suggesting that a higher coding pattern adjustment is needed to achieve actuarial equivalency.⁵

We appreciate CMS’s steps to address payments to MA plans arising due to “upcoding” and the opportunity to comment on the 2027 Medicare Advantage and Part D Advance Notice.

Sincerely,


Jeffrey A. Merkley
United States Senator


Bill Cassidy, M.D.
United States Senator


Tina Smith
United States Senator


Roger Marshall, M.D.
United States Senator

⁴ Medicare Payment Advisory Commission, *Chapter 11 – The Medicare Advantage Program: Status Report*, MedPAC.gov (March 2025),

https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_Ch11_MedPAC_Report_To_Congress_SEC.pdf.

⁵ Stuart Hammond, Andy Johnson, Luis Serna, and Grace Oh, *The Medicare Advantage Program: Status Report*, MedPAC.gov (Jan. 16, 2026), https://www.medpac.gov/wp-content/uploads/2026/01/Tab-N-MA_Status-Jan-2026.pdf.