



## Secret rules, denials & fraud: The dark side of Medicare Advantage

*Dispatcher: 911, what's your emergency?*

*Caller: America's healthcare system is broken and people are dying! (ambulance siren)*

Welcome to **Code WACK!**, where we shine a light on America's callous healthcare system, how it hurts us and what we can do about it. I'm your host, **Brenda Gazzar**.

This time on Code WACK! What are some of the possible dangers and pitfalls of Medicare Advantage plans and how do they respond to patients' needs differently compared to traditional Medicare? To find out, we spoke to Dr. Ed Weisbart, a retired family physician, former chief medical officer of Express Scripts and a national board member of Physicians for a National Health Program.

(5-second music stinger)

Welcome to **Code WACK!**, Dr. Weisbart.

[\(00:49\)](#):

**Weisbart:** Well, thank you Brenda.

[\(00:49\)](#):

***Q: It's open enrollment time for those signing up or renewing their insurance and a critical time for Medicare recipients who face a major choice between traditional Medicare and***

***Medicare Advantage. One key difference between traditional Medicare and Medicare Advantage is who pays the claims. Can you talk about why this difference is so important?***

[\(01:09\)](#):

**Weisbart:** Yeah, thanks. It's a really important distinction. So when Medicare pays your claims as it does in original or traditional Medicare parts A and B, when they pay your claims, that's their only job is to pay your claims. They don't get in the way, they're not trying to make money off of you. You have Medicare as your health insurance. You go to the doctor or hospital that you want and Medicare pays your claims and it's that simple almost.

But if you have opted into Medicare Advantage, Medicare itself is no longer paying your claims at all. Instead, Medicare is paying an insurance company to pay your claims and the insurance company as we all learned from having employer-based insurance and other things is really not out to just pay your claims. They're out to make money off of this and so the more often they can avoid paying your claims or deny paying your claims or delay paying your claims or make it complicated for anybody to get a claim paid, the more they can do that, the more money they can make <laugh>. So they're no longer really focused on you. They're now focused on their own profits and that's completely different than having the government just pay your claims and having Medicare pay your claims.

[\(02:20\)](#):

**Q:** Wow, and so how do the two programs differ when it comes to provider networks and access to specialists?

[\(02:26\)](#):

**Weisbart:** Same kind of difference. So provider networks in traditional or original Medicare, 89% of adult medicine physicians accept traditional Medicare as a payment model, 89% of adult medicine physicians and actually 96% of surgeons accept traditional Medicare and you can go to any of them that you want frankly with traditional Medicare. There isn't a number like that for Medicare Advantage, but it's significantly smaller. <Laugh> You know, there is no place where that data is collected for Medicare Advantage. So we don't know what that is, but we know that their business model is to direct you towards the doctors and hospitals that they prefer. That may not seem important when you're relatively younger and healthier. Certainly before your Medicare age or when you turn Medicare age, you may not really care. You think, 'Oh well you know, I've had to change doctors before. My employer has done that to me, I've had to do that.

[\(03:28\)](#):

I don't like it, but you know, I'm healthy, relatively.' But as you get older, as your health becomes more vulnerable and you have more health issues, you become if anything more

determined to want to see the doctor and hospital that you want and so Medicare Advantage, you may be willing to make that trade off when you first join Medicare and think, 'Oh, they'll tell me and I'll deal with that.' You need your health insurance when you are sick. The older you get having Medicare Advantage restrict which doctors you can go to or even change, You know, Medicare Advantage networks can change any time. You can have the Medicare Advantage program that you bought during open enrollment this year that you picked because it included your doctor and Medicare Advantage programs have the right to get rid of that doctor from your network at any time during the year.

(04:16):

So you're out of control. You know, if you have Medicare Advantage, you no longer have the ability to pick which doctors and hospitals up to a point. You know, it usually only becomes an issue when you're really sick near the end of life, when you need something complicated or you know, highly specialized, that's when the money really matters and that's when the Medicare Advantage networks really become intrusive and you may not run into that for a while. So, you know, and look outside of your state. What if you're traveling somewhere else? What if you're someone who spends a couple of months for the winter or the summer or somewhere else? Your insurance in Medicare advantage may not cover anything but the most dire of emergencies, if you're not in your so-called service area. That may not matter when you're younger and healthier, but the more medical conditions you acquire, the more important that becomes to you.

(05:09):

***Q: Mm, wow. So do you know how the Medicare Advantage plans pick which doctors that they want to work with?***

(05:16):

**Weisbart:** It's a trade off between what they can contract them for and how important that is for selling their product. So sometimes a large hospital in a community may be able to command a high rate and from the insurance company and they'll work it out cuz the insurance company feels that they have to have that hospital. But the trade off to that for the insurance company is if that hospital focuses on some very expensive condition, if it's a cancer network for example, the Medicare Advantage plan may actually decide, 'well yeah, we're not going to get as many members to sign up for Medicare Advantage if we don't include this high powered, you know, specialty cancer center. But those are primarily the really sick, expensive patients who we didn't want to begin with.' So sometimes the Medicare Advantage plans actually decide not to cover the top end hospital in your community or elsewhere in the country because they don't want to attract the people that really want those top-end hospitals.

(06:15):

And we've seen this over and over again. I mean, there's a ton of data that shows that ... I was just reading this morning actually about nursing homes that people in Medicare Advantage in general are forced to use the lower quality nursing homes compared to people in traditional Medicare that have more flexibility and can go to the nursing homes or home health – that Medicare Advantage patients are more likely to be connected up with a lower quality home health agency than are people in traditional Medicare. But let me quickly say that that's not everybody that's just on the average. If you look across the board, there are still of course some splendid care, you know, and home health and hospitals being delivered within Medicare Advantage. I'm just saying, you know, playing your odds, your odds are worse for getting really the best if you're in Medicare Advantage.

(06:59):

**Q: Wow. I'm glad you pointed that out. I mean, my guess is not a lot of people know that about Medicare Advantage plans.**

(07:06):

**Weisbart:** I know. There's an awful lot of people don't know about it and they just see Joe Namath on TV or some other, you know, ad which we can talk about on TV and Medicare Advantage offers lots of perks to convince you to join and you don't realize what you're trading off for a number of reasons.

(07:24):

**Q: Right, right. What about pre-authorizations. In 2021, Kaiser Family Foundation found that 99% of Medicare Advantage enrollees are in plans that require prior authorizations. How does this affect doctors and patients?**

(07:39):

**Weisbart:** Yeah, a prior authorization is as you know, before you can get something that your physician, you and your physician think is medically necessary and appropriate. Prior authorization means that for the insurer to pay for it, the doctor typically has to call the insurance company and get permission, get prior authorized to do the thing. That's something that's almost unheard of in original or traditional Medicare. It's, you know, pretty much if you and your doctor want you to go get something in original traditional Medicare, that's the end of the story. You go get it. You have to deal with the copays and deductibles for which there's a strategy that we need to talk about, but there's nobody asking you to get approval or prior authorization.

Whereas Medicare Advantage, it's the exact opposite. There's an awful lot of things that you just simply can't go get, even if you and your doctor think it's important and medically necessary and appropriate. There's this, you know, set of bureaucrats in a Medicare Advantage company, an

insurance company that knows if it's expensive, that's less profit for them and so they require the physician to get it prior authorized.

(08:38):

And even if the answer is yes at the end of that prior authorization, we as physicians, we buckle down and we do it most of the time, but we're loathe to do it. It makes us, you know, really think twice because it's expensive. I have to take time out of my day or I have to hire someone on my staff to take time out of their day to spend hours and hours jumping through these hoops and calling for approval and then the insurance company says, 'Well, but we don't really approve that much of it and so call back again and we've seen stories of people fighting the denial, getting an approval in a nursing home. I saw this once in a rehab center. They were denied extent more care. It was clearly appropriate.

(09:22):

And so the patient pursued getting an exception. They went through the exception process. The insurance company ultimately gave them the exception. Only three days later they were in the same situation. And the insurance company said, 'well, we gave you those two or three days but not the next two or three days' and there are people who go through that cycle, six, eight even. Well I heard a story of somebody who did it 10 times before she reached the end of her rehab course that her physician and physical therapists and the facility and indeed the patient and the family, all thought was valuable. So it's really onerous. It makes us not always do the things that we think our patient would benefit from. The patient is really aggravated by that process cuz it's aggravating just to talk about it right now. But often when you're sick, you know, you have brain fog, you know, we talk about that with COVID and it's true, that's a whole thing, but in lots of illnesses it's just overwhelming to be dealing with a life-threatening major chronic, you know illness and then on top of that, in that scenario, to have to deal with this third party, this insurance company, the Medicare Advantage folks who were only looking out for their bottom line and for their Wall Street traded profits, they make money the less care you get and that's a fundamentally flawed problem as compared to, you know, (traditional) Medicare where it's not like that.

(10:41):

**Q: Right. It seems like patients might just give up too.**

(10:46):

**Weisbart:** They do and that's what the insurance company counts on and, and the insurance company counts on. So what are you gonna do, complain, What are you going to do? Switch to a different insurance company, Victory <laugh>, we're happy if we didn't want you here to begin with, you're too sick. So, you know, your leverage over the insurance company, over the

Medicare Advantage company is pretty limited. So yeah, patients do give up, doctors give up and you know, well, we'll muddle along and it's, you know, a lot of those things shouldn't happen.

(11:12):

**Q: Wow. Thank you Dr. Weisbart. Overall, how do Medicare Advantage plans respond to patients' medical needs versus traditional Medicare with Medigap?**

(11:21):

**Weisbart:** Yeah, so they get to decide, you know, the Medicare Advantage company gets to decide and there's double digit numbers of percentages of cases where the Medicare Advantage company applies their own proprietary rules about what's medically necessary and what's not. You could really legitimately call them secret rules about what they think is medically appropriate or not. And they were just fined for this. There was just a huge discussion of this by the (U.S. Department of Health and Human Services') Office of the Inspector General a few months ago saying that Medicare Advantage companies frequently deny things based on their own secret proprietary rules that are still within the guidelines of what traditional, original Medicare says should be covered and, you know, they'll keep talking about that, but as long as nobody forces them to change that in a fundamental way, they get to decide and they often decide much more narrowly than is decided in traditional Medicare.

(12:13):

And this was an OIG report, this was the Office of Inspector General report on the broad population so I don't think that particular report resulted in any fines. It resulted in a recommendation to Medicare that you guys should tighten up your language on that so that they can't get away with this and Medicare responded saying, you know, you're right, we should tighten up our language. Well that's, you know, okay, great – necessary but not sufficient. You know, you need to do a lot more than that and basically it's not going to change cuz the business model of the Medicare Advantage plan is to get in the way of health care and so I don't care how many roadblocks you put for them to act egregiously, they're going to continue to do it. We've looked at Medicare Advantage plans and found more than 10 of them that have been convicted of fraud or settled for fraud to Medicare.

(13:00):

And those are the large ones. More than half of people in Medicare are in one that's done that. You know we just saw it again Centene here where I live in St. Louis, Centene just last week settled for I think more than a million dollars for one of their subsidiaries that was getting in the way of people having necessary pharmaceutical care. They're all doing that cuz that's the fundamental business model, get in the way of healthcare as much as they can until the penalties are so big that it's no longer their business model and that's, that's just not going to happen. None

of this happens in traditional original Medicare and people need to know, and they're opting to go into the Medicare Advantage plan because of a number of reasons we can talk about. These are the kinds of hazards to which they're exposing themselves that they may not be able to escape once they've locked into.

([13:50](#)):

**Q: Could a patient's health status affect whether they would be better off with traditional Medicare or with Medicare Advantage? Is there any case where they might be better off with Medicare Advantage in your opinion?**

([14:01](#)):

**Weisbart:** No, the only reason to pick Medicare Advantage is that the upfront short term costs, if you're healthy, can be lower – the upfront short term costs if you're healthy in Medicare Advantage than they would be in traditional Medicare, particularly if you have to buy a supplement, which you should. So the upfront short term costs are lower. But once you get even a little bit sick, the personal financial advantage of being in Medicare Advantage disappears. And I am unaware of any evidence of better health outcomes or a subpopulation that Medicare Advantage does a splendid job at. So you also have to, I also need to point out that this is, again, looking at all Medicare Advantage plans and there are probably some that do better and some that do worse, and we don't have any data about that. Medicare doesn't release, you know, meaningful data about which Medicare Advantage plans do better and worse. Medicare releases a star rating, they supposedly rate the quality of Medicare Advantage plans and they give them 1, 2, 3, 4, 5 stars based on how well the Medicare Advantage plan meets certain quality metrics. But those are really limited and almost all the Medicare Advantage plans do pretty well on those because they play to, you know, they know what the metric is, they perform well on that specific narrow thing but on a broad population, there's no reason to think broadly they do any better at all.

([15:27](#)):

***Thank you Dr. Ed Weisbart from Physicians for a National Health Program or PNHP.***

***Do you have a personal story you'd like to share about our 'wack' healthcare system? Contact us through our website at [heal-ca.org](http://heal-ca.org).***

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