Trump Maintains Legal Pressure on Medicare Advantage Insurers

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The Justice Department under President Donald Trump is defending the federal government's position in several Medicare Advantage lawsuits challenging policies that originated during President Joe Biden's term.

Given Trump's overall repudiation of the Biden years and Republicans' generally favorable disposition toward Medicare Advantage and preference for light regulation, Wall Street expected the new administration to take it easier on health insurance companies. So far, in court at least, that's not what's happening.

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Since Trump returned to the White House in January, the Justice Department has filed briefs supporting the Biden administration's defenses against companies such as Humana and eHealth in Medicare Advantage cases regarding the Star Ratings quality assessment program, marketing rules and the risk-adjustment system.

Biden oversaw an aggressive campaign to rein in Medicare Advantage insurers that included policies to constrain spending, crack down on misleading marketing, and institute tougher standards for star ratings and quality bonus payments.

Even though Trump is unlikely to continue along the exact trajectory as Biden, his administration will stay focused on how taxpayer money is spent, said Steve Hamilton, a partner at the law firm Reed Smith.

"With this administration, there's going to be a focus on ensuring that there's less waste and more opportunity to ensure that active participants in the Medicare and Medicaid programs will be using program dollars appropriately," Hamilton said. That includes defending the government's position in litigation over Biden-era payment and marketing policies, he said.

Risk adjustment

Humana sued the Health and Human Services Department in 2023 over a Centers for Medicare and Medicaid Services plan to claw back risk-adjustment overpayments dating from 2018 and eliminate a "fee-for-service adjuster" from Medicare Advantage payment calculations, which was used to align Medicare Advantage and fee-for-service Medicare payments. CMS expects to recoup up to $5 billion over 10 years through these actions.

Humana alleges CMS lacks the statutory authority to carry out those policies and did not follow proper regulatory procedure when it finalized the rule.

Last Wednesday, the Justice Department successfully asked the U.S. District Court for the Northern District of Texas for an extension through March 21 to respond to arguments from the plaintiffs.

Humana did not respond to a request for comment.

Star ratings

In a separate case before the same court, Humana is challenging the Medicare Advantage star ratings it received for this year, which came in lower than the company expected and cost them billions of dollars in bonus payments. Medicare Advantage market share leader UnitedHealth Group, Elevance Health and other insurers have filed similar lawsuits.

On Feb. 7, the Justice Department submitted a brief asking the court to either dismiss the case or to issue a summary judgment upholding the Star Ratings policies. The Justice Department reiterated its position that Humana doesn't have grounds to sue because it is simultaneously attempting to resolve the issue through the administrative complaint process.

The U.S. District Court for the Eastern District of Texas ruled in favor of UnitedHealth Group's star ratings lawsuit in November. The Justice Department notified the court that it intended to appeal the decision on Jan. 22, but dropped the case two days later.

Marketing

The Council for Medicare Choice, which represents online brokerages such as eHealth, e-TeleQuote and SelectQuote, and the insurer-backed trade group Americans for Beneficiary Choice sued CMS last year to undo a regulation imposing new restrictions on Medicare plan marketing.

The plaintiffs allege that CMS overstepped its authority by setting caps on broker compensation and didn't properly disclose the data it used to devise the payment limits.

On Jan. 31, the Justice Department called on the U.S. District Court for the Northern District of Texas to issue a summary judgment in its favor, citing what the government characterizes as clear authority under the law to regulate Medicare marketing, contracts and payments.

“Plaintiffs cannot evade the broad terms of the statute Congress wrote, which has been understood for over 15 years to authorize CMS’s dollar limits on how much Medicare Advantage organizations — who voluntarily engage in a government healthcare program — pay their subcontractors for marketing,” the Justice Department wrote.

The Council for Medicare Choice and Americans for Beneficiary Choice did not respond to requests for comment.

More to come

Health insurance companies nevertheless have good cause to expect the Trump administration to be friendlier to them than the Biden team, starting with personnel.

CMS administrator nominee Dr. Mehmet Oz has a long track record of support for Medicare Advantage, at one point even advocating the elimination of traditional Medicare and the implementation of "Medicare Advantage for All."

Similarly, Don Dempsey, Trump's appointee as associate director for health at the White House Office of Management and Budget, most recently was a vice president at the Better Medicare Alliance, an industry-backed coalition, and previously was an executive at Aetna parent company CVS Health.

And the administration's posture on those specific lawsuits does not indicate it will simply follow the previous administration's approach to Medicare Advantage.

Several pending regulations will signal the direction CMS will take, said Rebecca Buck, senior vice president of communications for the Better Medicare Alliance. Namely, Medicare Advantage insurers and their allies are eagerly awaiting the final Medicare Advantage and Part D policy rule and rate notice for 2026, she said.