

# Consolidation, Litigation Likely Fallout From Massive Cuts to Medicare Advantage

[http://www.insurancenewsnet.com/article.asp?neid=20090112200.1\\_c604001b02cf1fc1](http://www.insurancenewsnet.com/article.asp?neid=20090112200.1_c604001b02cf1fc1)

Consolidation, Litigation Likely Fallout From Massive Cuts to Medicare Advantage Fran Lysiak

Massive, across-the-board payment cuts to private Medicare Advantage health plans are a virtual certainty under incoming U.S. President Barack Obama and the Democratic-led Congress. Consolidation in the industry via mergers and acquisitions and a potential wave of costly litigation will be the fallout in the coming years as many smaller plans are likely to exit the program altogether, industry watchers say.

The industry is facing "a perfect storm" of significant reimbursement cuts and increases in regulation, said John Gorman, chief executive officer of Gorman Health Group, a managed care consulting firm. Plans must think about whether they are prepared to make the commitments to ride the storm out, "otherwise, they ought to just start thinking about getting out of the program right now." Obama and many congressional Democrats, including Rep. Pete Stark, chairman of the House Ways and Means health subcommittee, want to bring MA reimbursement payments in line with 100% of the government's traditional fee-for-service Medicare program, he said. The cuts would be phased in over a period of time to be determined, Gorman said.

The cuts would amount to about \$62 billion over five years, with the impact varying by county. They would be in addition to big cuts Congress enacted last year to MA private fee-for-service plans, which essentially means those plans would be gone by 2011, Gorman said (BestWire, Aug. 18, 2008).

MA plans offer seniors coverage for physician care, hospital services and prescription drugs, but also may include coverage for dental, vision and hearing. However, they can include higher fees than traditional, fee-for-service Medicare if beneficiaries get care outside their plan's provider network. Enrollees represent 19% of the total 44 million enrolled in Medicare, according to a June 2008 study by the Kaiser Family Foundation.

Federal payments to MA plans cost the government \$94 billion a year, according to a Kaiser Daily Health Policy Report in November. Democrats say \$15 billion of that amount is excessive and these "overpayments" could be used for other things, such as reforming the U.S. health care system, Kaiser said.

MA plans are likely strategizing on the adjustments they will need to make as a result of the pending cuts, which include raising premiums, revamping product offerings and changing geographic service areas, Gorman said.

Depending on how quickly payment neutrality is introduced, there could be dramatic reductions in the number of plan offerings, and the scope of services, said Brian Boyle, a health care attorney in the Washington, D.C., office of O'Melveny & Myers, whose practice includes the representation of health insurers:

If payments are reduced, supplemental benefits available to enrollees in Medicare Advantage plans will also be reduced, and that will make plans much less appealing to beneficiaries compared with traditional Medicare, he said. Seniors are "pretty savvy" consumers, and when they join a MA plan, it's typically because they've concluded that they get more value from it, Boyle said.

The Medicare managed care program has seen payment cuts before; the last time was in 1997 in the Balanced Budget Act, he noted. Some insurers withdrew altogether, while others reduced their participation in certain parts of the country where they thought they could no longer attract seniors, he said. As a result, enrollment declined by about one-third in the ensuing years and in certain areas, such as many counties of Florida and California, plans withdrew entirely, Boyle noted.

Litigation followed, with plaintiffs' lawyers contending that insurers decided to boycott the program to try to muscle Congress into raising payment rates again, he said. Their theory was that they left the business in order to pressure Congress, and did so in a coordinated fashion through a conspiracy or boycott, Boyle noted.

Ultimately, those lawsuits were unsuccessful, but insurers nevertheless had to pay a lot to defend them, he said. If the predictions are correct regarding reduced payments, many insurers will get out or will pull out of specific geographies and the plaintiffs' bar "is going cry conspiracy again," Boyle said.

In the fallout, mergers and acquisitions also are certain, as smaller players will exit the MA program over the

next few years, Gorman predicted. Today, there's about 700 plans and there may only be 400 to 500 plans by the end of 2011, he said.

According to the June 2008 Kaiser Family Foundation study, UnitedHealth, Humana, Kaiser Permanente and Blue Cross Blue Shield plans combined to account for 53% of MA enrollees at year-end 2007 (BestWire, July 16, 2008)

[Listen to an interview with Brian Boyle at [www.bestdayaudio.com](http://www.bestdayaudio.com)].

(By Fran Matso Lysiak, senior associate editor, BestWeek: [fran.lysiak@ambest.com](mailto:fran.lysiak@ambest.com))

Copyright © 2009 A.M. Best Company, Inc. Massive, across-the-board payment cuts to private Medicare Advantage health plans are a virtual certainty under incoming U.S.

---

For more insurance news, visit [InsuranceNewsNet.com](http://InsuranceNewsNet.com)

Don't miss another insurance headline, [sign up](#) for our free newsletter today.

Want your company's news featured on Insurance News Net? [Click Here](#)