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## Marketing Medicare – How Health Insurers and Brokers Use TV Ads to Attract Enrollees

**Drew Altman:** Good morning, everyone, and I guess good afternoon in the world. I'm in California. I'm Drew Altman, I'm the President and CEO of KFF. Welcome to another KFF briefing on a hot topic of whether it's our policy analysis or the polling or the journalism. As you know, if you follow us, we like to shed light on current policy issues, including just thinking in the last couple of weeks, webinars like this one on over the counter contraceptives on Medicare price negotiation. But today we're here to talk about studies we've done on Medicare and Medicare Advantage TV marketing and to hear from our headliner the CMS administrator, Chiquita Brooks-LaSure, about the things they've been doing to address the issue and to protect beneficiaries. There are trade-offs, but obviously lots of good reasons to join an MA plan. There must be because more than half of Medicare beneficiaries have now done so including my 95 year old mother-in-law in Boston.

I'm not completely sure she knows she's in an MA plan, but she has joined an MA plan. Being confused or even deceived by TV ads is not one of those good reasons. It's not that they're all confusing or even deceitful, but some are pretty close to the line and many beneficiaries have told us that they are confused in our studies and in our focus groups for, I don't know if this is comforting to me or not, but for some reason many of the ads seem to feature celebrity older men, so I thought I would just quickly show you a sampling of that. So Francis, the video please.

**Speaker 2:** Hi. [inaudible 00:02:48] back because this is important.

**William Shatner:** William Shatner here with a new message about Medicare benefits.

**Mike Huckabee:** Hi. I'm Mike Huckabee.

**Speaker 5:** Extra benefits extra money. Dynamite.

**Speaker 6:** Millions of people have called the Medicare coverage helpline. You should too.

**Joe Montana:** I'm Joe Montana. When you get to be 65, you have little patience for nonsense and inefficiency.

**Speaker 8:** The choice is simple.

**Drew Altman:** More like that in just a minute. Just two comments on that. We can't get bipartisan consensus on much these days. Maybe we could get bipartisan consensus on at least regulating the cheesiness in some of these ads. And for my friends who are Jets fans, I'm a Patriots fan. Maybe we'll see Aaron Rogers in some of these ads soon. That was bad. CMS has been addressing this and plays the key role in establishing standards and overseeing how Medicare plans market to the 65 million beneficiaries. And anyone who knows the administrator knows how much she caress about this issue. I always think I have always thought of the head of CMS really as the top position in our field of health policy overseeing Medicare and Medicaid and children's health insurance program and the marketplaces and all of the experimentation at CMMI with an annual budget of \$1.3 trillion.

And so to torture a really old saying about Medicare when Chiquita sneezes healthcare catches cold and one of the colds that it has been catching under Chiquita is just a much greater emphasis on equity in everything that CMS does, and that's actually what I worry about the most here. The folks with 12 PhDs will probably find their way through these ads and find what's best for them, but not everyone will. I also just want to say that CMS has played really a pivotal role, if not the pivotal role in my life. It was a stint in the administrator's office early on that completely changed my career, made it about public service.

It was a disagreement with first President Bush's chief of staff that led me to withdraw my nomination to actually run the agency, but it was only because of that that I was available to start KFF and we're kind of a CMS family. My daughter who runs Covered California worked there early in her career in [inaudible 00:05:28] and many, many members of our staff have worked in CMS. So we're looking forward to hearing from Chiquita and after she's done, our senior vice president, Tricia Neuman, who has long headed our Medicare program will take over. And so on behalf of all of us in health policy, all of us at KFF, but also for me just with a personal twist, please welcome Chiquita Brooks-LaSure.

**Chiquita Brooks-LaSure:** Thank you so much, Drew, for that very kind introduction and it is absolutely a pleasure to be here with all of you today. As Drew mentioned, we are so focused on making sure that people with Medicare receive access to accurate information about their healthcare options. But before I get to that, which is of course the focus of our discussion today, I wanted to just take a brief step back for a broader view. Today CMS covers over 160 million Americans across, as you know, I like to say the three Ms, Medicare, Medicaid and SHIP,

and the health insurance marketplaces that is nearly half of the population of the United States. CMS programs are powerful tools to improve their lives and the lives of all Americans. Drew said well that our work at CMS is very intertwined with the work of the Kaiser Family Foundation and I'm reminded of the Barbara Jordan keynote address at the 1976 Democratic National Convention, which of course your foundation is very proud of the work being done at the Barbara Jordan Center here in D.C.

So I wanted to share a quote from her address. She said, "We are trying not only to solve the problems of the present, but we are attempting on a larger scale to fulfill the promise of America. We are attempting to fulfill our national purpose to create and to sustain a society in which we are all equal." I really believe that it is important that all of our programs that we administer really make sure that we focus on making sure that no one is sidelined or left behind based on where they live, what they look like, or how much money they have, and nothing is more important. It's so critical that people really ensure that they get access to accurate information. I can share just a few examples of things that I've heard over the past year, the past two and a half when being in this role, about what happens to people when they do not have full information when they sign up for a Medicare Advantage plan.

Just last week I was in Indian country in South Dakota where we met with tribal leaders from around the country and I heard about tribal members who join an MA plan not understanding that where they actually get their care, their Indian Health Service, facilities aren't in the plans network. I hear regularly from patients and doctors when they have to delay their care including significant procedures like surgeries due to prior authorization or other rules, and they may not have these understanding of these steps that they're going to have to take when they sign up for a Medicare Advantage plan. Last year I was in Michigan talking at a PACE facility hearing from people who, for those of you who are not familiar with PACE or in basically have an adult day center where they were telling me about being bombarded with phone calls and asking me all of these questions about MA and who to trust.

And one last example is I know that many people find supplemental benefits like dental coverage extremely attractive. Yet what we see in our data from the Medicare current beneficiary survey is that people who have dental coverage through an MA plan get dental services at a similar rate to people who are in traditional Medicare. And so as Drew mentioned, so many of our lives, almost half of them are in MA. We consider MA plans our partners in delivering care. And so it's not that we're concerned about people enrolling in MA versus traditional Medicare. It's just critical that people have complete and accurate

information when they make their decisions. And I think we all know from our own personal experience with family members our own decisions that it can be complicated. So it's incredibly important that people really understand as they're being marketed to what they're going to be getting.

So what we are focused on is just making sure that people have access to accurate information. We've taken several steps to really strengthen our program in terms of coverage options. Just yesterday I was going through with the team to look at our website for this upcoming open enrollment period, and I'm really excited about just ways that our team is really working to make sure that people understand what their options are. We finalized protections in our Medicare Advantage and Part D final rule, which are really aimed at trying to strengthen and really make sure, as I said, that people have the right information. So ads by Medicare Advantage marketers and their agents must specifically disclose which plans they're marketing. So ads that mislead people into believing they are from the government are prohibited, as are ads that suggest that certain benefits are available to everyone who enrolls in the plan when they might only be available to specific individuals who qualify.

To this end, we're reviewing all television, radio, and web-based video advertisements in advance to ensure that they meet these and other requirements. We've also reinstated several protections that address predatory behavior to ensure that people with Medicare are not pressured into enrolling. For example, people who attend educational events about Medicare can't be given a sales pitch right afterwards. We are also making sure that agents review key information with Medicare beneficiaries when they discuss plan options. For example, agents are required to ask a standard list of questions so that all of the beneficiaries health needs are discussed and agents must also review the impact of any choice on a person's current health coverage. Finally, the MA and Part D final rule really put new requirements in place for agents and brokers and reiterates that Medicare Advantage plans are accountable for any agent, broker, or organization that markets on their behalf.

And we're requiring plans to work closely with their state departments of insurance as well as us to report agent misbehavior when it happens so we can work together to stop it. Each year we urge people with Medicare to review their options during this open enrollment period. It's important to stay healthy to make sure you have the right coverage. So we are very focused on making sure that in this upcoming enrollment that people really understand their care needs. These protections that we put forward are really spurred in large part by feedback that we have gotten through partners and from the people we serve.

We very much focused on the increasing complaints from people with Medicare that have been coming into our office over the last couple of years.

We are committed to finding additional solutions and protections as we can continue to hear concerns about increasing complaints and really welcome what you're hearing on the ground about what's working about our protections and what we can continue to do. I want to say a special thank you to the Kaiser Family Foundation for the work that they have done in putting together the analysis. I think that it's always helpful for all of us when we hear directly from people who are getting care what their experiences is, and so I appreciate the work of this foundation to continue to make sure that we are hearing from the voices of the people who are served. And so with that, I'm going to stop and be happy to answer a few questions.

**Tricia Neuman:**

Well, I want to thank you so much for joining us for all the work that you've done, not just for Medicare beneficiaries, but for the people served by those other two MS that you mentioned, Medicaid and the marketplace. I'm Tricia Neuman. I'm a senior VP at KFF and I'm Executive Director of our program on Medicare policy. It's especially timely that you are here now right before the open enrollment period. You know, if this year is anything like last year, people will have the choice of dozens of plans. They'll have traditional Medicare, Medicare Advantage.

If they choose Medicare Advantage, they might have more than 40 plans. And then there are all the Part D plans that are out there. And then as you mentioned, according to national surveys, people are satisfied with Medicare, whether it's traditional Medicare or Medicare Advantage, but they may not be aware of some of the important differences in these different coverage choices. So I'm just guessing as administrator, you hear a lot from family members and friends that ask you for your personal tips on what to do and how to make decisions during this period. What do you tell people? What's your best advice?

**Chiquita Brooks-LaSure:**

It is so true. I mean, I hear more as relatives start coming onto the Medicare program and healthcare is personal. Right? I mean we all at some point in our lives will need it and or have family members who are in need. And increasingly I think policymakers reach out to me and say, oh, my aunt is just as Drew said, a relative may not know that they're enrolled in MA until they have a issue. And so some of the things that I've been sharing and are really about making sure that people know that there is a trusted source. One of my favorite sources are the SHIPs, the state health insurance program, really making sure to reach out to consumers, people who need help navigating. And so many of us

need the personal touch. We encourage people to call 1-800-MEDICARE and we continue to really work on our website.

As I said, it was just meeting with the team and I don't want to over promise. I have a bad habit of doing that, but I was really excited about just some of the changes that we made to really encourage and educate and that's something I want to continue to build on in the coming years. So really welcome all of your feedback, but again, I think it's really people should and really work with their plans to find information. But I think it is helpful to know this is what's official from the government and is a place where you can get some non-biased information and then is absolutely a good place to start.

**Tricia Neuman:** Thank you for that. I just have one more question 'cause I know you need to run. CMS has sort of signed itself up to do a lot more enforcement with the new marketing guidelines. I'm wondering how you think about that. How tall an order is that to, for example, review the ads before they can air? That seems like a big challenge, so I wanted to get your thoughts about that.

**Chiquita Brooks-LaSure:** I think it's really important that we as a, we are a regulator and it's critical that we make sure that we're enforcing the rules that we put in place. And so very much hope that we continue to get our budget funded so that we can do all the work that needs to be done. But it's a priority for us to, as I said, to review the ads. We certainly also look into complaints. I mean we have and encourage people to let us know when they see things. That's often when we're able to find it. But we have important responsibilities to make sure that we are reviewing the materials and we have beefed up our efforts in terms of our staff time to make sure that we make this a priority. And it really is because just the volume of complaints that we've gotten have just skyrocketed in the last couple of years, which is an indication that we needed to do more in this area.

**Tricia Neuman:** Well thank you for doing so much in this area. This year could look very different from last year in terms of what ads we'll be seeing, but I hope that your efforts do help people make better choices or more informed decisions. They do certainly matter in terms of the benefits, the out-of-pocket costs, or access to providers, all of that. So we're hugely appreciative of your time and all the work that you do, and thank you so much for joining us. If we were in a room together, I am sure you would be hearing a round of applause and a standing ovation, so imagine all that and thanks so much.

**Chiquita Brooks-LaSure:** Well thank you and I'm sorry that I have to run, but I hope you enjoy the rest of the panel. Thank you.

**Tricia Neuman:**

Bye bye. Thank you. So it is now my great pleasure to turn to Jeannie Fuglesten Biniek, who is an Associate Director at KFF's program on Medicare policy. Jeannie will present findings from an analysis we are releasing or we did release today that examine television ads for Medicare beneficiaries that are during the last year's open enrollment period. So they may be different from what we see this year and also results from focus groups that we conducted during the open enrollment period. So Jeannie, come on in and take it over from here.

**Jeannie Fuglesten Biniek:**

Thank you, Tricia. And momentarily my slides will come up and I will get started. I am excited to share with you the report examining television ads for Medicare products that aired last fall. First, I'd like to thank my co-authors, Alex Cottrill, Nolan Sroczynski, Meredith Freed, and Tricia Neuman of KFF and Breeze Floyd, Laura Baum, and Erika Franklin Fowler of the Wesleyan Media Project. Next slide. As anyone who watches TV knows TV airways are flooded with ads for Medicare plans each fall. Nearly 650,000 airings of Medicare ads appeared between October 1st and December 7th of 2022. The most common television programs during which Medicare ads were aired included talk shows, reality court shows, and game shows. For example, regular viewers of Dr. Phil saw an average of 404 Medicare ads or eight ads per day last year. We examined the content and characteristics of these ads, which consisted of all types of Medicare plans including Part D and Medigap, but were dominated by ads for Medicare Advantage. Here are our main takeaways. Next slide.

First, TV ads for Medicare Advantage often showed images of government issued Medicare cards or advertised a Medicare hotline other than 1-800-MEDICARE. There is concern that the use of the Medicare name, logo, or card in a private marketing materials could confuse people and lead them to think the ads are coming from the government. We found that the Medicare card or similar image was shown in more than one quarter of ad airings for Medicare advantage. Next slide. Additionally, more than 80% of Medicare Advantage ads sponsored by brokers and other third parties urged viewers to call a Medicare hotline other than 1-800-MEDICARE. CMS has issued new rules that apply to ads aired this fall that prohibit the use of Medicare cards unless it's for educational purposes as well as the misleading use of the Medicare name. So we may not see the Medicare card used in as many ads in the upcoming open enrollment period. And one thing to look out for is whether private hotlines will be permitted or if they will have a different name. Next slide. Let's take a look at some examples of these ads.

**Speaker 13:**

Attention anyone on Medicare, the Medicare annual enrollment period is now open.

Speaker 14: Call now to see how this little card could give you some big benefits.

Speaker 13: Just call the toll free number on your screen.

Speaker 15: So call now.

Speaker 14: Call now. Call now. Call now during the Medicare annual enrollment period, just call the Medicare benefits line to get your options.

Speaker 16: Call now.

**Jeannie Fuglesten Biniek:** Next slide. Second, more than 50,000 airings suggested that people with Medicare miss out if they're not in Medicare Advantage. Language such as missing or entitled may give some viewers the impression they have incomplete coverage or have overlooked a necessary step in the enrollment process if they receive their Medicare coverage through traditional Medicare. For example, the ads included phrases on screen or an audio that said things like you are now entitled to eliminate copays. You don't automatically get these benefits. And that's right. There are people on Medicare that don't have a Medicare Part C plan. Next slide.

Third, the vast majority of Medicare Advantage ad airings touted extra benefits. This is not surprising. In 2023, virtually all Medicare Advantage plans offer some supplemental benefits. Medicare Advantage ads mentioned, dental, vision, hearing, and prescription drug benefits each and more than 50% of all airings benefits that may appeal to people in poorer health and those that are valuable to people with serious illnesses or mobility impairments were marketed substantially less often. Next slide. Additionally, more than two thirds of broker and third party sponsored ads promoted money back in your social security check. For example, Joe Namath mentioned this benefit in every one of the ads he appeared in and those ads aired over 56,000 times. The frequent mention of this benefit is notable because just 17% of plans available in 2023 offer a rebate against the Part B premium that every Medicare beneficiary is required to pay. Next slide. Here's a look at how ads promote extra benefits.

Speaker 17: Nowadays, everyone is looking for more.

Speaker 18: Including \$0 deep cleanings.

Speaker 19: You'll pay no monthly premium.



Speaker 20: I chose free massage therapy. Choose five flex benefits for more than 15 options with access to thousands of doctors and a \$550 flex card, a spending card for groceries, rent, and more.

Speaker 21: And the benefit that adds money back to your social security check every month.

Speaker 22: Wow.

**Jeannie Fuglesten Biniek:** Next slide. The last takeaway I want to highlight is that one quarter of Medicare Advantage enrollers showed active seniors, while few included people with visible disabilities or serious illness. And some of these ads featured seniors engaging in activities that demand a pretty high degree of fitness such as mountain biking, zip lining, and trampoline jumping. Next slide. Let's take a look at some very active seniors.

Speaker 23: Advantage me.

Speaker 24: Can't wait until I turn 65.

**Jeannie Fuglesten Biniek:** Next slide. So where does this lead Medicare beneficiaries who are trying to figure out the best coverage option for themselves? Last fall, we also conducted focus groups to better understand people's experiences choosing their Medicare coverage. We found that many beneficiaries may be left without a clear understanding of their coverage options and their trade-offs. Comments from participants included, it just seems to me that there should be more education for the consumer because some of these ads are so misleading. We're overrun with these commercials and you know they just say the same thing over and over again. You know, call this. Call this. I mean, the way they have it advertised, it's not really explaining anything. And it's just hard to understand to begin with, but it's really hard when you're trying to compare plans, different plans and what they offer. And with that, I'm delighted to turn it over to Tricia and the panel for further discussion.

**Tricia Neuman:** Thank you, Jeannie. That was absolutely terrific. I would like to bring the other panelists on right now to get their take about the marketing of health plans and the implications for people with Medicare. I'm going to be introducing them briefly, but you can get their full bios in the chat. So I'm very, very happy to welcome Lindsey Copeland, who's the Director of Federal Policy at the Medicare Rights Center, which is a national nonprofit organization that works to help people with Medicare understand their benefits and navigate the system. Christopher Graves, Founder of the Ogilvy Center for Behavioral Science at

Ogilvy Consulting, a global communications agency who was previously the global CEO of Ogilvy public relations. And Mark Hamelburg, Senior Vice President of federal programs at America's Health Insurance Plans, the National Association of Health Insurance Providers.

Welcome, all. It's really great to have you here. And I'm just going to go get started right away because we have lots of questions and we also have questions coming in from the audience, which is exciting. So my first question I think will be for Lindsey. Lindsey, the Medicare Rights Center runs a hotline to help Medicare beneficiaries with questions and concerns about their coverage. What have you been hearing from the hotline about these television ads and other marketing activities? How are beneficiaries taking in all these ads and responding to them? Did the results from our focus group resonate well with you?

**Lindsey Copeland:**

Great. Thank you for the opportunity to be here and for that really important question. And, yes, other than the prolific nature of ads featuring Joe Namath, the report has a lot of other truths in there too that really reflect our experiences with our helpline and other work directly with beneficiaries. It does a great job of capturing the marketing madness that so many people have to navigate each year. And this really presents itself on our national helpline in a few ways. Calls about misleading marketing typically fall into three main sort general buckets. The first are calls from people who are really in the throws of the comparison and plan selection process. They're often overwhelmed by the sheer number of plans and the task of comparing them all and the misleading marketing really adds a layer of complexity to that, making them even more confused and unsure of who or what to trust.

So callers typically reach out because maybe they saw a TV ad or a mailer that has led them to feel some pressure to take action even if they are perfectly happy with their current coverage. And the report touches on some of these situations in which people can feel spurred to action out of concern. They're missing out on important benefits if they aren't enrolled in a specific plan by calling a specific number and, you know, in the next 10 minutes or that they're not complying with official Medicare rules or deadlines. And this can be even more difficult to parse when these ads are coupled with Medicare like imagery, which of course implies that Medicare and not a plan is behind the ad or material. We've had callers say, I don't know what to do about this piece of mail that I just got. It seems like it's from a plan, but it says to respond to the records department by a specific date.

Others who are calling to check on things that maybe sound too good to be true, like TV ads saying they may qualify for a discount on Medicare or extra benefits based on their zip code or because they're hearing something in ads that doesn't align with what they've heard in previous years. It's directly from their plan or from Medicare or from others that they trust like friends and family. While some people call us before taking action or having their coverage impacted, others don't. Alarmingly about 20% of our helpline calls on misleading marketing are from people who were enrolled in a plan without their knowledge or consent. Some thought they were talking to Medicare. Others thought they knew that they were talking to a broker or an agent, but thought that person was just gathering data for other purposes only to later find themselves with new and unwanted coverage.

One recent caller was in his late eighties. He thought he was calling Medicare during fall open enrollment, but ended up calling a similar number that connected him with a plan agent who started asking him questions and thinking that he was talking to Medicare, he answered them. He didn't realize the agent had enrolled him in an MA plan until he got the paperwork several weeks later. And that's a pretty typical occurrence unfortunately. The last set of marketing related calls are from people who have made intentional coverage decisions, but maybe ones that they regret and ones that were certainly based on inaccurate or incomplete information from a plan or broker. Many were promising that failed to materialize. Again, extra benefits, lower Part B premiums, maybe robust provider networks. And it's also not uncommon to hear from beneficiaries who didn't realize what they were giving up, that there were trade-offs involved like utilization and provider networks, and there are extra complications for people who have original Medicare and supplemental coverage like a Medigap because in some states Medigaps have very restricted purchase rights.

And so if you give up your Medigap, you may not be able to get it back, at least in an affordable way. And these coverage decisions can have really surprising outcomes that undermines beneficiary health and financial security leaving them with higher than expected out-of-pocket costs and problems accessing needed care. One last example here, we had a caller who switched to a new MA plan because she relied on information from the plan's representative, which said that she would save money by doing so. She has end-stage renal disease and under her original plan she was paying about \$280 a month in co-insurance for her dialysis. And under the new plan, those monthly costs skyrocketed to \$1,600.

She didn't get those bills though until the spring when it was too late to fix through an open enrollment period and was just extremely upset and very stressed that she'd be unable to continue to afford her treatments. And often there's no quick or easy fix for beneficiaries who find themselves in some of these situations where their coverage decision has been made on in reliance or inadvertently due to some misleading marketing. They may be locked into a plan until the next enrollment window, which could be the next fall. All of which is to say, I think in summary, that people are confused and they're making decisions that have serious and sometimes really harmful consequences. So we're hopeful that some of these rule changes will begin to make a difference.

**Tricia Neuman:** Thank you. Mark, I'd love to turn to you if I could, I know that AHIP has been engaged in these issues and I've heard you say that you think it's really important for people to have good information to make these coverage choices. So it would be helpful to know what were your main concerns related to marketing activities before the new guidance came out and what are you really happy to see? What are your thoughts about the guidelines?

**Mark Hamelburg:** Thanks for the question, Tricia. Thanks for inviting me to be part of the panel. So I do want to emphasize at the start, as you were indicating, Medicare enrollees should be protected from bad actors who engage in misleading advertising and marketing tactics. It's not good for consumers most importantly. And secondly, it's also not good for MA plans. Having unhappy customers for any business is not a good thing. And MA plans, if they have complaints including marketing complaints, it can impact their star ratings, so can have a negative impact in that way. So it's very important that consumers sign up for products that, and they understand what they're signing up for. And we do think that addressing misleading ads was important for CMS and a number of the requirements that the administrator mentioned we think are really important and are going to change the environment for 2024.

She indicated that they heard loudly and clearly the concerns raised by various stakeholders. And I think one of the most important things is that the agency will now be pre-approving all TV ads including not just from plans but from agents and brokers as well. So the agency is really taking on the task of ensuring that there are not going to be misleading ads going forward. Also, the requirement about not using the Medicare name, a logo, or products in a misleading manner and that the Medicare cards image can only be used with permission and authorization from CMS, another important provision in these requirements. And I know these are some of the issues that were highlighted earlier and also in the report. Plans not being permitted to advertise benefits that are not available to beneficiaries in a particular service area, again, this is

important. People should not be signing up for a product that they think has something that it isn't actually being offered.

I do want to say, Tricia, that while it is absolutely important that there be a way to look back at potential issues that were raised in the past and make sure that they're being addressed, it's also important to put these issues in a broader context. The bigger picture around the MA program is over 31 and a half million people are now in it. More than half of all who are eligible to sign up or now signing up for it. The satisfaction rates are over 90% for MA.

People are by and large enrolling and staying in these products and they're doing so because they and their families are seeing that they provide good value. The program really is working remarkably well for the people who are enrolled in it. If it was not, seniors would not be signing up for it. They would be leaving in droves or there would be quality metrics indicating inferior care, which there are not. And so none of those facts exist. So I do fear in while we legitimately talk about areas of concern, without understanding this broader context, it somehow gets lost and it suggests that there are rampant problems in the program that are really adversely affecting beneficiaries and none of the data suggests that.

**Tricia Neuman:**

Thank you, Mark. What I'd like to do is bring Chris into the conversation. Chris, I know you think about these things from a slightly different perspective. You're not a Medicare wonk day and night, but you do know communications. And when we talked earlier, you observed that the ads that you were seeing from the brokers looked pretty different from the ads that you were seeing from the health insurance. And I think you, and just as Drew did earlier, you both referred to broker ads as having kind of a cheesy feel while the insurer ads are a little bit more polished and conventional promoting features like extra benefits and featuring those healthy fit seniors who are having a good time on trampolines or shimmying down the zip lines. Why is it that the look and feel of ads sponsored by brokers and insurers are so different? Do they have a different end goal? Is this intentional? Is it a strategy? Can you talk to us a little bit more about that?

**Christopher Graves:**

Absolutely, Tricia, and thank you to you and to KFF for having me for this and to my esteemed colleagues who have allowed me to join them on this platform. So yes, if you think about advertising, advertisements have several goals, but two big ones are how they make you feel about something or a brand or an issue. And the other one is what you do about that. And that's often called a call to action advertisement. And so what you'll see in these ads is they are generally call to action advertisement. They want you to do something, they want you to

call, they want you to sign up, right, call to action. Now, they're not the same because you have a group of them that were doing lead generation. In other words, they weren't actually selling any insurance at all. What they were selling is you.

And it's kind of ironic that 50 years ago exactly, the artist Richard Serra produced a video work with looks very much like some of the cheaper MA call to action ads. It was a video piece of work and in it he was really attacking TV and he had this low production value text on a blue background and he said, you are the product of TV. You are delivered to the advertiser who is the customer. And if you go forward a bit into the start of social media and throughout social media, you know that there is an expression that's become a meme. If the product is free, you are the product. And so what you're looking at here with the lead generation, as opposed to insurance companies actually selling a product, the lead generation ads are trying quite simply to make it something urgent and repetitive so that you will pick up the phone and call and share some of your contact details. Why? They resell those contact details as opposed to selling you an insurance policy.

So it's quite valuable who you are, anything that they can connect you to in terms of past consumption behaviors, they connect these dots, and it becomes a very valuable data point. So they are not really concerned about making you feel as a brand long-term they want you to do. And in the doing, you'll notice that often and my mother-in-law is an assisted living facility, and you'll notice that the television is on without the audio and it doesn't really matter because the script is actually transcribed next to the now aged celebrity. And those celebrities that you put up earlier, you'll notice that they're really one of two categories. They are, first of all, as you pointed out, they happen to be all male, but they are either aged former sports stars or TV actors. And you'll also notice that you would be hard pressed to align them with any sort of worldview or politics so that they're fairly benign from that point of view and not meant to be polarizing.

But those ads, particularly the lead generation, data rape ads, where they're grabbing your data, they're using the same form of red, white, and blue, which is kind of what behavioral scientists called a heuristic or a little shortcut. If you're driving and you see a red octagonal sign at the corner, what do you do? You stop. Even if the word S-T-O-P is not written on it. If you see a yellow triangular sign, you yield. These are kinds of heuristics. So by putting a very simplistic red, white, and blue screen, it is sort of a surrogate for the card itself or for the government.

Now by making it look super low tech, you might think, oh my god, they have any budget, but what if this were intentional? What if this is a form of salience, meaning they want it to pop out. So TV by and large is very slick, and TV ads are incredibly slick. So when you put this in the middle of them, it's almost like those broadcast warnings you get when a hurricane or a tornado is coming through, it cuts through the clutter and a very cheap low budget, low production value way. So again, there are different goals. One goal is to call to action for you perhaps to buy a service, a real insurance policy for example. But the other one is just to capture your data and it hasn't been clear to the consumers, which is which.

**Tricia Neuman:**

Well, that is definitely true. I don't know that it's clear to a lot of people whether that's what's going on. That sort of leads me to a next question and Lindsey and Mark, I want to hear your thoughts about this too. The new CMS regulations prohibit the misleading use of the Medicare name in plan marketing materials. They also prohibit the use of the Medicare card except for educational purposes. So on the one hand, I can see that using the Medicare name as kind of a call out to perspective enrollees like this product is for you.

But on the other hand, as others have said, I can see how it could be confusing 'cause it could give them the impression, the false impression that the ad was sponsored by the federal government. For example, we saw in the ads that Jeannie showed a lot of call this Medicare hotline, which was not the 1-800-MEDICARE number. So I guess, Chris, while we have you on screen, but I do want the others to comment, how do we know when the brand name Medicare is educational and when is it potentially misleading? And I guess more generally, how do we think CMS should think about ads that are misleading?

**Christopher Graves:**

Well, first of all, when you take a term that becomes a sort of a generic label like Medicare and is associated with a government service, it's really hard then to decouple that in people's minds. You know, you hear the repetition in these ads, and this is something again in behavioral science called the mere exposure effect, and it's been proven that whether something is true, false, misleading, or bang on, the more you repeat something, the more people tend to believe it. Even smart people, this is not just a problem for idiots. So when you repeat and repeat and repeat something, that's a problem. But also if you have something like Medicare or if it had been the IRS, it's really hard for people to see a nuance that you are a private sector player under an umbrella of an offering from the government. Really that's asking us too much frankly.

Once we hear Medicare, we just assume it's all one thing and one thing from the government. So it is really tough to go backwards once you've done that with

society to strip it all out, the way, you know, in 30 seconds in an advertisement. Again, you're either asking people to or hoping people will feel something or do something. You noticed earlier, for example, that these celebrities were older. Well, that's called the rosy retrospection bias. It's nostalgia marketing. This is why we go back to our high school reunions, even if we hated those people and the high school because with retrospection, with nostalgia, we become much more fond and distorted about that.

And they're all upbeat and active because we are all wired as either being more promotion or prevention focused as individuals. Prevention focused people are worried about harm and they want to get things right. Promotion focused people were really about leveling up and doing the next thing. Now that they've found that prevention focused, people pause and evaluate, they don't actually call immediately or call now, but if you are primed that everything is good and upbeat, you're a little bit more predisposed to take action. So there are a little bit of ancillary things around your question about Medicare as a generic. In my view, once you've put it out there to try to rebrand and re-explain that there are private sector players can be quite tough.

**Tricia Neuman:** Mark and Lindsey, do you want to weigh in on this? I can tell you we're starting to get a bunch of questions in from the audience.

**Mark Hamelburg:** Yeah. I would just say that I think we're going to have to wait to see how CMS interprets it. I think given the administrative's remarks, my guess is that they will use various resources to try to determine based on the complaints that they previously received, what they in their best sense believe would be misleading and what would not be. And it very well may be just as ads get pre-approved by CMS and then run, if there are complaints that come in, it's very possible that CMS will course correct like they did last year when they started receiving complaints and then imposed a requirement for pre-approval on ads on a go forward basis at that stage. So I think we won't know for sure. I also wanted to potentially build on some of the stuff that Chris was talking about with the nature of the people in the ads, but I didn't want to prevent Lindsey from responding as well if she wanted to.

**Lindsey Copeland:** Sure, thank you. Just briefly, yeah, I mean I think that's part of the implementation process is when rules are changed, rules then take effect and then rules are changed again and then they take effect, and so that monitoring and that oversight is going to be really, really important. And the onus should not be on the beneficiaries to be the ones who are having to report when ads are going awry. There needs to be some oversight of that at the federal level. I think Chris pointed about the linkage in people's minds to Medicare when they



see Medicare Advantage is very deeply embedded. We often hear from people who don't know if they have original Medicare or Medicare Advantage. And so CMS really has an important stake in this in making sure that their brand name also stays above board with these marketing ads because people are going to associate them with it and assume that CMS is standing behind what the Medicare Advantage ads are saying.

I also think we can't just look to ads to solve all of the world's problems here. There needs to be a comprehensive approach to ensure that all of the dynamics that are coming together that make the beneficiary plan choice and then the resulting negative impacts that can come from ending up with a suboptimal plan occur are addressed, so making plans easier to compare, reducing the risk of a beneficiary will make a bad choice in the first place, making sure that they can correct that choice once they realize it. All of that comes into play here too. And with respect to marketing and the ads, some counter programming I think would be helpful too. People get an onslaught of information about Medicare Advantage, but if they aren't automatically enrolled in original Medicare when they turn 65 because they're already receiving social security, they don't get any notification from the federal government about when they should take action to do so. So there are some really common sense things that can be done to empower beneficiaries to make truly informed decisions, which I think is everyone's goal here today.

**Tricia Neuman:**

Let me follow up on that, Lindsey, because I want to get to a few questions from the audience and somebody picked up on the finding from the study and said, well, most of the ads are for Medicare Advantage. How do people learn about traditional Medicare? Why are there so few ads for Medigap? You know, you mentioned it would be nice in your view, it would be nice to get a letter. There is the Medicare new handbook. And focus groups, we've heard people say, yes, I love the handbook. I get it every year. I get it and I put it in a drawer and I never look at it again. I'm sorry for CMS because I know they work hard on it, but does anybody want to take a crack at answering that?

**Mark Hamelburg:**

Well on that, I can say that we should remember that Medigap products are regulated at the state level, and my understanding is that they could potentially be subject to multiple state regulators depending upon how the ads might run. So that alone could explain some of the limitations or the fewer ads because it might be a different regulatory environment and a stricter environment for releasing ads. So I think we need to understand these are very different. It's a Medigap product that wraps around the original Medicare program, but it's not a federally run benefit like MA is.

**Tricia Neuman:** True.

**Christopher Graves:** Let me just say something about the caveats Lindsey was talking about. You know, if you look at drug ads from pharma companies in the US, at least direct to consumer ads, you'll notice that the visuals and the caveats are very different. So the visuals are quite a relief, happiness, a resolution, you're free of the disease. Some are actually dancing, but the caveats that come fast and furiously in very tiny text or in audio that sounds like a robotic monotonous, a hundred mile an hour reader that just says, yes, you're going to die and you're going to have a heart attack and whatever [inaudible 00:54:50] so the notion that you slap caveats onto ads really doesn't work, that you really need to restrict it more upstream in the language and not just let people say what they want to say and then slip a caveat at the very end saying, by the way, this is a lead generation company and not really anything to do with CMS. Nobody's going to read that. Nobody's going to hear that.

**Tricia Neuman:** I guess the flip side is in a 30 second soundbite, is there any information that would be very helpful to give people in these ads? Lindsey and Mark, you've talked about essential information for consumers. Is there anything that you think should absolutely be in these ads for these Medicare products? So let's put Medigap aside because that's somewhat different from Medicare.

**Lindsey Copeland:** Yeah. Absolutely. And to kind of bring us back and complete the thought around making sure that this information reaches people early and consistently, one of the reasons right now for the information gap between MA and original Medicare for people who are new to the program is that MA plans have an interest in making sure that people know about them to sign up for them. Original Medicare, perhaps not quite so much in the same way. And there is currently no federal requirement that CMS or SSA reach out to people who are approaching Medicare eligibility about their responsibilities to sign up for the program and some of those enrollment rules and deadlines. There's legislation that we support that would fix that called the BENES 2.0 Act. And, you know, getting all of those things in place are really important. If we are going to have ads for Medicare Advantage plans, they do need to be more clear about the trade-offs.

We frequently hear from people who are, as I mentioned, very surprised to find out that some of the things that they were promised don't materialize once they switch their coverage. Things like network limitations, prior authorizations, some things that they might be giving up, what that means for their current coverage, supplemental benefits, different sets of supplemental benefits like SSBCI have different rules and availability than things that are standardly

available like dental, vision, and hearing. But all of that is so complicated and it gets really, really lost in some of these very short soundbite and commercials and mailers. And as to how to most effectively fix that, I don't know that we know what those commercials should look like, but, you know, as my colleagues said the other day, caveat [inaudible 00:57:34] is a pretty wild position to take when you're talking about older adults and people with disabilities and their health insurance. We need to do more to make sure that these people are protected.

**Mark Hamelburg:**

I'll agree with Lindsey that Medicare, whether it's original Medicare or Medicare Advantage is complicated and really there's no effective way for an advertisement to even begin to capture the key elements, which is really in part why CMS has very extensive rules to protect people before they enroll and to make sure that they have the information they need, including prospective enrollees must receive a pre-enrollment checklist that's standardized by CMS that gives them key information before they sign up. There's a new 2024 rule that requires for telephonic enrollments that the contents of this checklist be reviewed with people before they complete an enrollment. And for agents and brokers, there's a new requirement for 2024 that says that agent brokers must fully discuss prior to enrollment a series of specific topics and information with beneficiaries to make sure that they're identifying the plan that best meets their needs.

So I think to some degree CMS has anticipated these concerns and is building in additional protections to make sure, while as Chris was indicating, the ad might get people interested in exploring options, there are a number of protections in place to make sure that people as best as possible understand what they're signing up for. And of course on the backend, if people do in fact enroll in something and they didn't realize, for whatever reason, what they were signing up for, there are multiple opportunities for people to disenroll from the product, including in the first three months of every year people can either go to a different plan or they can go to traditional Medicare.

**Christopher Graves:**

So you can use what has been used in other domains. For example, the star rating system. That's a simple heuristic. If CMS is authorizing or creating that and in agreement with that kind of system, that kind of star system is a very short, simple offer, a tip you can give people. Check out the number of star ratings first. Second, remember in the 30 seconds you really, as my colleagues have just said there, you don't have time to explain everything. You really want to drive them to a place where they can then do some more exploration, get some more counsel. Now, in the past that might've been tougher. As people get older, the internet might be confusing. Going forward, that's easier and easier,

both from the point of view of savviness of those of us who are hitting that age as well as the simplicity of the navigation.

So you really want to drive them to an independent sort of information that is not somebody trying to sell you something where they can do comparison evaluations. Third, what insurers rarely or perhaps never do is make it easy to navigate this complication. Not because they're trying to obfuscate, but because it's difficult and it is complicated and complex. But here's something that they could try. They could use a kind of personification. They could give a life stage emblematic person. Here's Chris. Here's Lindsey. Here's Mark. Are you more like Chris or are you more like Lindsey or are you more like Mark? If you're more like Mark, this plan makes more sense for you. If you're more like Lindsey, that plan would make more sense like you. So a kind of personification rather than just a line item itemization of the various permutations that they can choose from, which ultimately paralyzes people.

**Tricia Neuman:**

I hate to do this because I could go on forever and I can tell you I have a ton of questions I haven't gotten to, but it is the hour. And so I want to thank everyone for participating today, including the CMS administrator, our panelists, Lindsey, Chris, and Mark and everyone who tuned in online. I think this has been a great discussion. I think we barely scratched the surface, but that's kind of what we can do in an hour. This is an important time. This is the Medicare open enrollment period is coming.

I think we can all agree that people will hopefully use this time to get good information, maybe get those warm and fuzzy feelings from ads, but then figure out what's most important and have that be a guiding principle in how they choose their coverage. In terms of the reports that we've released, you can access both online at [www.KFF.org](http://www.KFF.org) and the recording of the event will be posted online hopefully later today. All registrants will be sent an email when the recording is available. So once again, I just want to thank everybody for joining us. It's been a great discussion and we'll see you next time.

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