

May 11, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

The undersigned organizations are writing to share our concerns about the Medicare-related impacts of unwinding of the Public Health Emergency (PHE). We understand the preparation currently underway is a significant undertaking and appreciate the administration's focus on Medicaid eligibility, including the guidance the Centers for Medicare & Medicaid Services (CMS) shared with states and other entities about managing Medicaid and Children's Health Insurance (CHIP) redeterminations, terminations, and other transitions.¹ However, as outlined below, two key Medicare issues have not yet been fully addressed: (1) Failure to enroll in Medicare during the Initial Enrollment Period, and (2) The loss of Medigap guaranteed issue rights. Immediate policy interventions are needed to avoid significant disruptions in access to care and coverage. Below, please find brief summaries of these matters and suggested administrative solutions.

Background

The 2020 Families First Coronavirus Response Act required any state accepting additional Federal Medical Assistance Percentage (FMAP) funds during the PHE to maintain individuals' Medicaid coverage until one month after the end of the PHE.² This applies to individuals who became eligible for Medicare during this time. Without this "continuous coverage" requirement, state Medicaid agencies would have terminated these individuals' expansion Medicaid coverage when they first became Medicare eligible and evaluated them for categorical Medicaid and Medicare Savings Program (MSP) eligibility—as well as, hopefully, provided them with information about effectuating their Medicare enrollment and counseled them about the availability of other supplemental coverage, such as Medigap.

The continuation of expansion Medicaid and other coverage during the pandemic has halted this process, but not the underlying Medicare eligibility, or the deadlines that come with it. As a result, many people have likely missed important enrollment windows and may experience gaps in coverage, increased costs, and fewer options.

We are specifically concerned that people who became eligible for Medicare during the PHE and remained on their Medicaid, Marketplace, or COBRA plan in error may face delays in accessing Part B, premium penalties, or missed opportunities to purchase affordable Medigap coverage.

¹ CMS, "SHO# 22-001 RE: Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency," (March 3, 2022), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf>.

² Pub. L. No. 116-127

This letter is narrowly focused on Medicare-related enrollment and disenrollment problems we anticipate will arise as the PHE is unwound. Of course, other issues and questions—particularly around coverage changes and cost-sharing waivers—are also highly likely.

Issue 1: Failure to Enroll in Medicare During the Initial Enrollment Period

Many people who became eligible for Medicare during the pandemic may have inadvertently missed their opportunity to enroll in Medicare during their Initial Enrollment Period (IEP). Some of these individuals will lose their current Medicaid coverage at the end of the PHE, but the proposed rule changes creating a Medicare special enrollment period (SEP) for loss of Medicaid will not take effect until January 2023, at the earliest.³ Furthermore, individuals receiving Marketplace subsidies and those with COBRA continuation coverage have no access to a Medicare SEP.

These individuals may be left un- or under-insured—unable to enroll in Medicare until the next General Enrollment Period (GEP); unable to qualify for Marketplace subsidies to make Affordable Care Act plans affordable; and ineligible for Medicaid based on aged, blind, and disabled status because of their income or assets. Affected individuals may also face late enrollment penalties when they are finally able to enroll in Medicare. To mitigate these harms, we respectfully recommend the following solutions:

Strengthen Medicaid Redetermination Processes. Some of these people will be eligible for other forms of Medicaid and/or the Medicare Savings Programs which can facilitate their enrollment into Part B (and potentially Part A) outside of the GEP. Others will hopefully be able to utilize the proposed SEP for people who lose Medicaid starting in January 2023, including the retroactivity outlined in the proposed rule. It will be crucial that each state's process for evaluating the Medicaid redeterminations appropriately screens for other Medicaid programs, including the MSPs, and takes affirmative steps to obtain needed eligibility information (for example, amount of assets) to effectively manage this transition without gaps. Failure to do so would create significant hardship in the form of periods of non-coverage and/or unnecessary Medicare premium deductions from already low Social Security checks.

We encourage CMS and states to particularly flag those individuals, like those receiving Supplemental Security Income (SSI) and individuals for whom Social Security Disability or Retirement is the sole source of income on their Medicaid application, who are likely to remain Medicaid eligible or to be eligible for MSP. Deprioritizing these redeterminations, or, at minimum, ensuring more careful handling can, hopefully, avoid significant health and economic consequences for some of the most at-risk beneficiaries. We ask CMS to encourage states to set aside redeterminations or Medicaid terminations for those who are or may be eligible for Medicare until at least January 2023, regardless of when the PHE ends, to avoid gaps in coverage or administrative mistakes, and to simplify use of the proposed SEP.

Provide Guidance to States on Dual Eligible and MSP Populations. Similarly, we are concerned the increased volume of Medicaid redeterminations may cause interruptions in care and benefits for people who have high health needs and low incomes—especially those who are dually eligible for Medicare and

³ 87 FR 25090

Medicaid. In our experience, it is not uncommon for these enrollees to face significant barriers when they transition from Medicaid-only coverage to Medicaid, Medicare, and an MSP. For example, for a person with SSI who does not qualify for premium-free Part A to successfully enroll in Medicare and an MSP, state Medicaid caseworkers, the Social Security Administration (SSA), and CMS may need to coordinate. This can be a time intensive yet urgent and high-stakes process; missteps can result in coverage gaps and significant out-of-pocket costs for people with limited income and assets. We appreciate the guidance CMS provided to states highlighting flexibilities for managing an anticipated influx of Medicaid fair hearings and encourage the administration to create parallel materials for the dual eligible and MSP populations.⁴

Improve Access to and Outreach on Relief. Because income and asset limits for the Medicaid expansion population are more generous than aged, blind, and disabled Medicaid programs and MSPs in most states, and because some people with Marketplace or COBRA coverage may have also erroneously delayed Medicare enrollment, some affected individuals will encounter difficulties in enrolling in Medicare when the PHE ends.

We appreciate the recent announcement of a proposed relevant SEP in 2023, pursuant to CMS's authority under the BENES Act of 2020, and also the establishment of specific equitable relief for people who were unable to effectuate their Medicare enrollment as a result of SSA telephone outages.⁵

We ask CMS to undertake educational and outreach initiatives to ensure that people who could benefit from these enrollment flexibilities are aware of and able to access them. We also encourage the administration to consider utilizing the equitable relief process in additional ways, recognizing that communications about Medicare enrollment opportunities and obligations from CMS, SSA, state agencies, and the Department of Labor, as well as from employers and plans, have been confusing, contradictory, and often unavailable during this time.

In addition to these important steps, we ask CMS to continue to encourage states to broaden Medicaid eligibility criteria, particularly with respect to MSPs, so that fewer individuals transitioning to Medicare from Medicaid will suddenly find their health care unaffordable. Eligibility changes such as those recently adopted by California and New York would improve Medicare access and affordability over the long term and would be particularly helpful for the population transitioning to Medicare at the end of the PHE.⁶

Our requested administrative solutions for people who missed enrolling in Medicare include:

1. Provide guidance and technical assistance to state Medicaid agencies regarding Medicaid redeterminations that result in terminations due to age or disability status changes, particularly

⁴ CMS, "SHO# 22-001 RE: Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency," (March 3, 2022), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf>.

⁵ CMS, "Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and other Revisions to Medicare Enrollment and Eligibility Rules (CMS-4199-P)," (April 22, 2022), <https://www.cms.gov/newsroom/fact-sheets/implementing-certain-provisions-consolidated-appropriations-act-2021-and-other-revisions-medicare-1>; and SSA, "Equitable Relief for Medicare Enrollment and Disenrollment," (May 3, 2022), <https://blog.ssa.gov/equitable-relief-for-medicare-enrollment-and-disenrollment/>.

⁶ Medicare Rights Center, "New York Passes Landmark Budget to Help Residents Access and Afford the Care they Need," (April 14, 2022), <https://www.medicarerights.org/medicare-watch/2022/04/14/new-york-passes-landmark-budget-to-help-residents-access-and-afford-the-care-they-need>; and Justice in Aging, "Important Health Care Changes Coming in 2022 for Low-Income Older Californians," (October 2021), <https://justiceinaging.org/wp-content/uploads/2021/10/Important-Health-Care-Changes-Coming-in-2022-for-Low-Income-Older-Californians.pdf>.

focusing on avoiding disruptions in access for people who are dually eligible for Medicare and Medicaid.

2. Expand education about the Medicare Savings Programs. We recommend including specific language about Medicare enrollment and MSP eligibility in certain termination letters, such as those for people losing Marketplace subsidies as a result of the resumption of Periodic Data Matching.
3. Create additional special opportunities for equitable relief as needed, mirroring the recently announced opportunity available to people who failed to enroll in Medicare due to trouble getting in touch with SSA and the now lapsed equitable relief provision for people who were dually enrolled in the Marketplace and Medicare.⁷

Issue 2: Loss of Medigap Guaranteed Issue Rights

Individuals have a federally mandated six-month open enrollment period for Medigap when they first enroll in Medicare, but federal law prohibits the sale of a Medigap policy to individuals who are on Medicaid. People who maintained Medicaid eligibility and enrolled in Medicare during the PHE, avoiding the Part B enrollment issue described above, but failed to take active steps to terminate their Medicaid coverage for the duration of their Medigap enrollment period will not have a federal right to buy a Medigap plan without underwriting once they lose their Medicaid coverage. We respectfully suggest the following solutions:

Ease Access to Medigaps. Under normal circumstances, Medicaid coverage terminates upon Medicare eligibility, unless the individual qualifies for aged, blind, and disabled Medicaid. This allows them to purchase a Medigap during their six-month open enrollment period. Creating a similar guaranteed issue period for affected individuals whose Medicaid coverage ends when the PHE does could be an effective remedy, paired with expanded protections that may be needed.

Our requested administrative solutions for missed Medigap open enrollment include:

1. Establish a six-month guaranteed issue period for the sale of Medigap policies beginning on the date of the loss of Medicaid, or date of notification of such loss, whichever is later, after the termination of the PHE for those who were enrolled in Medicaid during their Medigap open enrollment period.
2. Coordinate with State Departments of Insurance to modify or expand state Medigap protections to accommodate this population.

Thank you for the opportunity to highlight our concerns and suggested remedies. We greatly appreciate the work you and your team have done to support individuals with disabilities and older adults during this crisis. We look forward to continuing to partner to advance those goals, during the PHE and beyond.

⁷ SSA, "Equitable Relief for Medicare Enrollment and Disenrollment," (May 3, 2022), <https://blog.ssa.gov/equitable-relief-for-medicare-enrollment-and-disenrollment/>; and CMS, "Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assistants," <https://www.cms.gov/medicare/eligibility-and-enrollment/medicare-and-the-marketplace/downloads/limited-equitable-relief-fact-sheet.pdf>.

Sincerely,

Aging Life Care Association
Center for Medicare Advocacy
Families USA
Justice in Aging
LeadingAge
Medicare Rights Center
National Academy of Elder Law Attorneys
National Committee to Preserve Social Security and Medicare
National Council on Aging
USAging

CC:

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