

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

December 21, 2015

VIA ELECTRONIC SUBMISSION

Acting Administrator Andy Slavitt
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-8016

RE: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 [CMS–9937–P]

Dear Administrator Slavitt,

Justice in Aging is pleased to submit comments on the proposed Notice of Benefit and Payment Parameters for 2017 (NBPP).¹ Justice in Aging, formerly the National Senior Citizens Law Center, uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Our Medicare advocacy focuses primarily on the impact of the program on low income older adults, particularly those dually eligible for Medicare and Medicaid coverage.

We appreciate that CMS “recognize[s] the importance of a smooth transition to Medicare coverage” and we strongly encourage notification that an enrollee may have become eligible for Medicare. 80 Fed. Reg. 75530. It is essential that people with Marketplace plans nearing Medicare eligibility receive clear information at the appropriate time in order to make an informed decision about nearing Medicare enrollment. For Marketplace enrollees, honest enrollment mistakes can lead to lifetime premium penalties, gaps in coverage, disruptions in access to needed care, and/or tax penalties. As such, we urge CMS to develop a comprehensive system to screen, notify, and educate people with Marketplace coverage approaching Medicare eligibility about Medicare enrollment rules and obligations.

Essential Messaging for Marketplace Enrollees Nearing Medicare Eligibility: We encourage CMS to develop a comprehensive system to notify individuals in the Marketplace about nearing Medicare eligibility. Ideally, this system would include multiple types of notification and educational content that is appropriately timed ahead of an individual’s Initial Enrollment Period (IEP) for Medicare. Below we outline potential notices and educational messaging critical to facilitating seamless transitions for individuals approaching Medicare eligibility.

¹ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 [CMS–9937–P] 45 CFR Parts 144, 146, 147, 153, 154, 155, 156, and 158 (pg. 156)

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As referenced in the proposed rule, “pop-ups” on Healthcare.gov: We suggest that this content “pop up” for both those seeking a Marketplace plan who will turn 65 during the plan year and for those who will reach their 25th month of disability coverage in the upcoming year. These “pop-ups” should:

- Inform people that they need to learn more about Medicare;
- Refer to appropriate sources, including SSA.gov and State Health Insurance Assistance Programs (SHIPs); and
- Provide information about how Medicare eligibility affects eligibility for premium tax credits.

While we agree that online “pop-ups” are a useful tool, we do not believe “pop-ups” will be sufficient to provide advance notice to individuals about nearing Medicare eligibility given the complexity of the Medicare enrollment process, particularly for those transitioning from the Marketplace to Medicare. We suggest the following notices that could be made available through the state and federal Marketplaces:

Notice(s) for QHP enrollees becoming Medicare eligible due to age or disability that includes:

- Clear and directive language that asserts it is generally not advisable to keep a QHP and delay Medicare enrollment or decline Medicare Part B;
- Clear information about the termination of premium tax credits (with noted exceptions);
- A full explanation of the possible consequences of delayed Medicare enrollment;
- A full explanation on how to disenroll from the QHP upon becoming Medicare eligible;
- Information on Medigap insurance, emphasizing guaranteed issue rights and open enrollment periods;
- Information on Medicare Advantage and Part D enrollment periods; and
- Information on Medicare Savings Programs and the Low Income Subsidy (Extra Help).

Notice(s) for SHOP plan enrollees becoming Medicare eligible due to age or disability that includes:

- Clear and detailed language about coordination of benefits rules, with an emphasis on employer size;
- Information on the availability of a Part B Special Enrollment Period (SEP);
- Information on how to assess whether the SHOP plan’s drug coverage is creditable under Part D;
- A full explanation of the possible consequences of delayed Medicare enrollment;
- A full explanation on how to disenroll from the plan upon becoming Medicare eligible or during a SEP;
- Information on Medigap insurance, emphasizing guaranteed issue rights and open enrollment periods;
- Information on Medicare Advantage and Part D enrollment periods; and
- Information on Medicare Savings Programs and the Low Income Subsidy (Extra Help).

Screening for Medicare Eligibility and Other Key Programs: In addition to notification, we believe screening can serve a critical role in alleviating transition challenges, by identifying individuals at risk of mismanaging their Medicare transition or who have already potentially mismanaged this transition. We believe the Federal and State Marketplaces should screen for Medicare eligibility (as they do for Medicaid and CHIP) to appropriately direct individuals who are already eligible for Medicare to SSA for Medicare enrollment. While we know the Marketplace screens for Medicare eligibility for the purposes of calculating premium tax credits, that screening does not translate into notification about Medicare enrollment rules or referral to the appropriate entity, and may not stop enrollment, even when the anti-duplication provisions are applicable.

We also urge CMS to ensure that States are completing comprehensive screening and referral programs for all individuals who lose eligibility for expansion Medicaid as a result of Medicare eligibility but who may be eligible for other Medicaid programs, including Medicare Savings Programs. We also recommend that CMS encourage State Marketplaces to explore opportunities to extend the “no wrong door” enrollment concept advanced through the Affordable Care Act (ACA) to newly eligible low-income Medicare beneficiaries. For example, State Marketplaces could facilitate screening and referral for MSPs and traditional Medicaid eligibility categories. Over time, State Marketplaces could also fold enrollment and application processes for these programs into their existing systems.²

Additional Considerations

We strongly encourage CMS to explore developing specific notices and/or educational content for populations with unique Medicare enrollment considerations, including those who are ineligible for premium-free Part A, QHP enrollees with End Stage Renal Disease, and individuals in the Marketplace who are already Medicare eligible. We also urge you to provide clarification on the coordination of benefit rules regarding the interactions of QHPs and Medicare. We concur with the detailed recommendations of the Medicare Rights Center regarding these specific issues, and as well as with their recommendations more broadly.

Thank you for the opportunity to comment. If there are questions concerning this submission, please contact Jennifer Goldberg, Directing Attorney, jgoldberg@justiceinaging.org.

Sincerely,



Kevin Prindiville
Executive Director

² See Goggin-Callahan, D., “Lessons from New York: Building a Better Medicaid Eligibility and Enrollment System for Duals,” (New York State Health Foundation: September 2012), available at: <http://nyshealthfoundation.org/uploads/resources/lessons-from-new-york-building-a-better-medicaid-eligibility-and-enrollment-system-for-duals.pdf>