

September 20, 2019

Administrator Seema Verma  
Centers for Medicare & Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Administrator Verma:

The undersigned organizations share a commitment to advancing the health and economic security of individuals and families with Marketplace coverage and with Medicare. In 2016, the Centers for Medicare & Medicaid Services (CMS) announced a time-limited equitable relief opportunity for select individuals currently or previously enrolled in Marketplace plans who delayed Medicare enrollment during their Initial Enrollment Period (IEP).<sup>1</sup> CMS subsequently extended this policy,<sup>2</sup> and expanded it to people with Marketplace coverage who did not enroll in Medicare during a qualifying Special Enrollment Period (SEP).<sup>3</sup> For both populations, this important relief is set to expire on September 30, 2019.

**We write today to urge CMS to extend the existing policy until such time as the agency can demonstrate it has sufficiently corrected the outreach and education issues that continue to cause serious enrollment errors—through September 30, 2020, at a minimum.**

Time-limited equitable relief helps some Medicare beneficiaries correct problems with their Part B enrollment resulting from confusion or misinformation regarding Medicare and the Marketplaces. Under this relief, Medicare-eligible individuals with Marketplace coverage can apply to enroll in Part B without penalty, and those who have already transitioned to Medicare can request that any Part B late enrollment penalties be reduced or eliminated.

In establishing and continuing this policy, CMS was responding appropriately to the needs of Marketplace enrollees who became newly eligible for Medicare. Many of these enrollees inadvertently delayed or declined Part B because they were unaware of the financial penalties and coverage gaps that could result from choosing and/or keeping their Marketplace coverage.

Unfortunately, these enrollment errors persist. Many of our organizations continue to observe—and be alarmed by—the challenges people face when attempting to navigate Medicare’s interactions with their Marketplace coverage or access this relief. As a result, we are concerned that CMS’s beneficiary and intra-agency educational efforts, while welcome, have not been as effective as they could be.

Retaining the existing policy through at least September 30, 2020 would give the federal government additional time to cure this misinformation and prevent further confusion. Accordingly, as outlined below, we urge the agency to not only extend the availability of this relief, but also to work in the

<sup>1</sup> CMS, “Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assistors,” (2016), available at: <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/Limited-Equitable-Relief-Fact-Sheet.pdf>.

<sup>2</sup> CMS, “Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assistors,” (2017), available at: <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP-and-Navigators-Fact-Sheet-Limited-Equitable-Relief.pdf>; and (2018), available at: <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP-and-Navigators-Fact-Sheet-10-10-2018.pdf>.

<sup>3</sup> CMS, “Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assistors,” (2018), available at: [https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP\\_and\\_Navigators\\_ER\\_Fact\\_Sheet.pdf](https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP_and_Navigators_ER_Fact_Sheet.pdf).

interim to improve its outreach and education efforts to better reach all who are eligible and to enhance intra-agency understanding.

### **Improvements Are Needed to Better Inform All Who are Eligible**

While we welcome CMS's outreach to date, more could be done to educate consumers about Medicare-Marketplace interactions and transitions. We encourage CMS to refine its materials in order to more clearly connect beneficiaries with the information they need to make optimal coverage decisions.

In particular, while we appreciate CMS's attempts to incorporate information about Marketplace and Medicare enrollment into existing beneficiary communications, namely the Welcome to Medicare packet, such inclusion alone is unlikely to meaningfully impact enrollee awareness or behavior. In part, that is because the relevant information is not readily accessible. Rather, it is embedded in a dense set of materials that people who do not believe they need to enroll in Medicare—such as those who are satisfied with their Marketplace coverage—may not delve into in detail. Problematically, these are the very people who need to understand these coverage interactions. To better highlight this information, we urge CMS to include it in a cover letter accompanying the Welcome to Medicare packet mailing and/or in another separate, easily understandable communication.

We also remain concerned about the scope of CMS's outreach. We are increasingly hearing from individuals who are eligible for Medicare due to disability who are experiencing Marketplace to Medicare confusion or enrollment errors. This indicates the agency's outreach to this cohort may not be maximally effective. As such, we urge CMS to rework its current approach to more strategically target Marketplace enrollees who are approaching their 24th month of disability payments.

Similarly, we are concerned about CMS's reliance on Periodic Data Matching (PDM) notices to alert affected beneficiaries about time-limited equitable relief, as the notices are only sent to one subset of all who are eligible: people dually enrolled in Medicare Part A and the federally-facilitated Marketplace. This approach necessarily excludes several key populations, including Medicare-eligible individuals who are or were enrolled in state-based Exchanges, and some impacted beneficiaries who are already paying Part B late enrollment penalties. It is also inadequate to fully inform those who do receive the notices, as CMS is not issuing the PDMs frequently enough to allow recipients to utilize their IEP, potentially exposing them to gaps in coverage and high out-of-pocket costs.

To better notify and educate these populations, we encourage CMS to expand its own outreach and to work with states to do the same, so that all who are eligible for this relief have the opportunity to learn about and access it in a timely manner. Further, we encourage CMS to run the PDM notices more frequently, and to ensure that the notices continue to inform people about their eligibility for this relief once the policy can no longer be extended.

### **Improvements Are Needed to Strengthen Intra-Agency Education and Awareness**

Also concerning is the frequency with which we continue to hear from people who have been misinformed by the Social Security Administration (SSA) about their eligibility for time-limited equitable relief and/or the need to enroll in Part B. We have seen the resulting case delays and denials temporarily hinder or even significantly derail beneficiaries' efforts to successfully apply for time-limited equitable relief. By continuing this policy—and associated intra-agency education efforts—CMS could increase awareness of time-limited equitable relief within SSA and help better prepare its employees to recognize the issue and process beneficiary applications.

Looking ahead, given the ongoing confusion among field office staff while the policy has been active, we are extremely concerned about what will happen once it “ends.” That is, we understand that the law may preclude CMS from continuing to offer equitable relief to those with an IEP or SEP after the point at which the agency can demonstrate that its revised materials and expanded notification efforts have sufficiently eliminated federal misinformation. And that at that point, equitable relief will remain available to those who met the eligibility criteria when the policy was in effect, regardless of when they access it.

To remedy current confusion and guard against future agency error, we urge CMS to continue to work with SSA to provide updated, consistent education to field office staff, as well as to develop materials to help guide impacted individuals through the application process.

## **Conclusion**

According to CMS, it put the current time-limited equitable relief policy in place, in part, to empower people with the time and resources they need “to make an informed decision regarding their Medicare Part B enrollment”<sup>4</sup> that they did not have access to “at the time of their Medicare IEP, Part B SEP...or initial enrollment in the Exchange.”<sup>5</sup> In our experience, although CMS has endeavored to improve its approach, the confusion, misinformation, and resulting enrollment mistakes that led the agency to create this equitable relief pathway remain. Because the consequences of these errors are so significant, before CMS considers eliminating this policy, we urge the agency to verify that all of its materials clearly and accurately explain the rights and obligations of newly Medicare eligible individuals.

Since CMS has not yet ensured that people eligible for time-limited equitable relief have adequate information and accessible processes for obtaining it, and has not yet shown that its updated materials are sufficiently clear or wide enough in scope to eliminate ongoing enrollment mistakes, the current time-limited equitable relief policy should be extended until these assurances can be made; for one year, at a minimum.

Thank you for your consideration.

Sincerely,

AARP  
ACCSSES  
AFL-CIO  
AgeOptions  
Aging Life Care Association  
Alliance for Aging Research  
Alliance for Retired Americans  
AMDA - The Society for Post-Acute and Long-Term Care Medicine  
America's Physician Groups  
American Association of Service Coordinators  
American Association on Health and Disability

<sup>4</sup> CMS, “Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assisters,” (2016), available at: <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/Limited-Equitable-Relief-Fact-Sheet.pdf>.

<sup>5</sup>CMS, “Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assisters,” (2018), available at: [https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP\\_and\\_Navigators\\_ER\\_Fact\\_Sheet.pdf](https://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Downloads/SHIP_and_Navigators_ER_Fact_Sheet.pdf).

American Federation of State, County and Municipal Employees (AFSCME)  
American Geriatrics Society  
American Society on Aging  
Association of Jewish Aging Services of North America (AJAS)  
B'nai B'rith International  
Better Medicare Alliance  
BlueCross BlueShield Association  
Blue Shield of California  
Brain Injury Association of America  
California Health Advocates  
Center for Elder Law & Justice  
Center for Independence of the Disabled, NY  
Center for Medicare Advocacy  
Community Catalyst  
Community Service Society  
Dialysis Patient Citizens  
Disability Rights Education and Defense Fund (DREDF)  
Disabled In Action of Metropolitan New York  
Empire Justice Center  
Epilepsy Foundation  
Families USA  
Health Care for All New York  
Highmark BlueCross BlueShield  
International Association for Indigenous Aging  
International Union, United Automobile, Aerospace, and Agricultural Workers of America (UAW)  
Justice in Aging  
Lakeshore Foundation  
LeadingAge  
Lutheran Services in America  
Meals on Wheels America  
Medicare Rights Center  
National Academy of Elder Law Attorneys (NAELA)  
National Active and Retired Federal Employees Association (NARFE)  
National Adult Day Services Association (NADSA)  
National Adult Protective Services Association (NAPSA)  
National Association for Home Care and Hospice (NAHC)  
National Association for Rural Mental Health (NARMH)  
National Association of Area Agencies on Aging (n4a)  
National Association of County Behavioral Health & Developmental Disability Directors (NACBHDD)  
National Association of Health Underwriters (NAHU)  
National Association of Nutrition and Aging Services Programs (NANASP)  
National Association of Social Workers (NASW)  
National Association of State Long-Term Care Ombudsman Programs (NASOP)  
National Coalition on Health Care (NCHC)  
National Committee to Preserve Social Security and Medicare  
National Consumers League  
National Council on Aging (NCOA)  
National Education Association  
National Health Law Program (NHeLP)

National Partnership for Women & Families  
National Patient Advocate Foundation (NPAF)  
National Senior Corps Association (NSCA)  
New Yorkers for Accessible Health Coverage  
New York Legal Assistance Group  
Program to Improve Eldercare, Altarum  
SAGE  
Service Employees International Union (SEIU)  
Smart Policy Works  
Social Security Works  
The Actors Fund  
The Arc of the United States  
The Gerontological Society of America  
The National Consumer Voice for Quality Long-Term Care  
The National Multiple Sclerosis Society  
Third Way  
Voices of Health Care  
Volunteers of America  
Women's Institute for a Secure Retirement (WISER)

cc:

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