

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Health Care Rights During COVID-19

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FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that 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.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

California Health Advocates

www.cahealthadvocates.org

Providing quality Medicare and related healthcare coverage information, education and policy advocacy

- **Advocacy** – Bring the experiences of Medicare beneficiaries to the public, and especially legislators and their staff at federal and state levels, through media and educational campaigns.
- **Policy** – Conduct public policy research to support recommendations for improving rights and protections for Medicare beneficiaries and their families
- **Education** – Provide timely and high-quality information on Medicare through our website, fact sheets, policy briefs and educational workshops
- **Senior Medicare Patrol** – Fraud prevention education and outreach

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.
- Find materials for this training and past trainings by searching the [Resource Library](https://justiceinaging.org/resource-library), justiceinaging.org/resource-library. A recording will be posted to [Justice in Aging's Vimeo page](https://Justice%20in%20Aging's%20Vimeo%20page) at the conclusion of the presentation, vimeo.com/justiceinaging.

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To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

Today's Agenda

- Overview of Legislative Actions
- Enrollment Considerations
- Services Considerations

Legislation

- Congress has passed 3 COVID-19 response bills:
 - Coronavirus Preparedness and Response Supplemental Appropriations Act, H.R. 6074 (C1) (3/6/20)
 - Families First Coronavirus Response Act, H.R. 6201 (C2)
 - Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748 (C3)
- HEROES Act (C4) passed out of the House (5/15/20).



Enrollment/Eligibility

Medicare Enrollment

- Happens through local Social Security Field offices
 - Offices are closed for in-person assistance so must complete applications online (Part A & LIS) or by mail (Part B). Can also fax the Part B enrollment form now. Also the route for MSPs.
 - Medicare applications taking months to process
- Limited enrollment periods
 - Equitable relief granted for individuals who could have enrolled beginning 3/17 to 6/17.
 - Coverage may not start right away
 - Special enrollment period created for changes to MAPD enrollment if unable to change during the MA open enrollment period or another SEP due to COVID-19. Available until 7/13.
 - Neither require proof of impact of COVID-19.

Medi-Cal Enrollment

- Executive Order [N-29-20](#) (3/17/20)
- [MEDIL 20-07](#) (3/16/20): counties to delay processing redeterminations and delay discontinuances and negative actions for 90 days.
 - Exceptions include: new applications, inter-county transfers, adding a person, decreasing income, and the 90-day cure period.
- County eligibility offices not open but available via phone, mail, and online.
- Government stimulus payments do NOT affect Medi-Cal eligibility.



Coverage & Services

Medicare Coverage of COVID-19 Testing & Treatment

- Part B covers:
 - Coronavirus testing and the associated provider visit
 - No beneficiary cost-sharing
 - Eventual vaccine & administration
 - No beneficiary cost sharing
- Part A covers:
 - COVID related hospitalizations
 - Standard coverage rules and cost-sharing apply
 - COVID related stays at SNF
 - Coverage expanded; standard cost-sharing applies

Part A

Skilled Nursing Facilities (SNF)

- Waiver of 3-day inpatient hospital stay requirement for Part A SNF coverage
- Authorization of extension of SNF benefits for residents who have exhausted Part A benefits
- Note residents are being moved in some states (“cohorting”)

Home Health

- Homebound requirement not waived
- But definition of “confined to home” expanded to include when leaving home is “medically contraindicated” due to:
 - A confirmed or suspected diagnosis of COVID-19, or
 - Having a condition that may make the patient more susceptible to contracting COVID-19

Part B

Expansion of Telehealth

- Covers range of providers, including doctors, nurse practitioners, clinical psychologists, and licensed clinical social workers
- Covers routine visits, mental health counseling, preventive health screenings for cancer and other illnesses
- Most telehealth services require audio and video chat/function at home or any health care facility
- Cost-sharing can be charged, but providers will not be subject to sanctions for reducing or waiving cost-sharing

Part C

Medicare Advantage (MA)

- [Memo](#) released to MAPD plans (4/21/20) such that plans must:
 - Not charge cost-sharing for COVID-19 testing, testing-related services, and vaccines
 - Cannot impose prior authorizations or other UM requirements for these services
 - Eff. 3/18/20

Part C

Medicare Advantage Waivers

- MA Plan are allowed (but not required) to:
 - Expand benefits during emergency (e.g. meal delivery, medical transportation)
 - Waive/reduce cost-sharing
 - Expand coverage of telehealth benefits
 - Waive requirements re: model of care, involuntary disenrollments
 - Waive or relax prior authorization

Part D

Prescription Drug Coverage

- Prescription Drug Plans (PDPs) and MA-PD plans required to:
 - Provide 90-day refills when upon enrollee request
 - Ensure enrollees have access to covered drugs at out-of-network pharmacies when enrollees cannot reasonably be expected to use in-network pharmacies
- PDPs & MA-PDs allowed to waive
 - Mail & home delivery limitations
 - Prior authorization for COVID-related drugs and other formulary drugs
- Other COVID-specific Issues
 - Getting prescriptions due to provider office closures
 - Difficulty contacting Prescription Drug Plan or MA-PD plan
 - Challenges picking up medications or having them delivered

Cal MediConnect Plans

- CMS released memo re: flexibilities for CMC plans on 3/20/20 to 5/31/20.
 - Plans can request temporary suspension of face-to-face care coordination activities so long as plan substitutes with telephonic or telehealth and conducts assertive outreach to at-risk enrollees on COVID-19.
- Duals who entered deeming prior to EO may still be disenrolled at the conclusion of their deeming period.

Requirements Still in Place

- Civil Rights Protections
 - Age Discrimination Act
 - Section 1557
 - Title VI
 - Language Access Requirements
- Medicare Communications & Marketing Guidelines (MCMG)
 - Can continue to report marketing abuses (e.g. door-to-door solicitation, unsolicited calls, etc.) to marketing@cms.hhs.gov; Justice in Aging available for technical support.
 - DMHC and CMS Region 9 may also offer support/enforcement.

Additional Resources

- [Justice in Aging COVID-19](#)
- [Center for Medicare Advocacy COVID-19 Webpage](#)
- [Medicare Rights Center](#) & [Medicare Interactive](#)

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Questions?

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General Rights To Medigap Coverage

Health Care Rights for Older Adults During COVID-19

Justice in Aging and California Health
Advocates Senior Medicare Patrol





EMPLOYMENT, MEDICARE, AND COBRA

Phantom Benefits:
How COBRA Bites
Medicare Beneficiaries





Medicare While Working

- Medicare at age 65 while working (IEP)
 - *No Medicare eligibility notice*
 - Disconnect between Social Security & Medicare
 - SSA full retirement: age 67+/- (depends on birthdate)
 - Medicare eligibility: At automatic at age 65
 - Disabled: Auto enrolled after 24 months of SSDI
 - Premium cost for Medicare Part B (None for Part A)
 - Medicare is secondary coverage
 - Except during deductible period or non-covered benefits
 - Can enroll later with no premium penalty (SEP)



Working Elders: Federal Rules

- Employed seniors
 - Highest it's been in 55 years (2019)
 - Until COVID-19, after ???
- Employer health benefits
 - Medicare Secondary Payer (MSP) rules apply
 - Age 65+ = 20 or more employees
 - Disabled = 100 or more employees
 - Primary coverage (regardless of Medicare)
 - Can't offer supplemental coverage
 - ESRD = 1st 30 months, regardless of size
 - Smaller employers (less than 20 or 100)
 - MSP rules don't apply
 - Medicare is primary, employer health plan is secondary
 - Can offer or provide supplemental benefits



What's An Exchange?

- Employer coverage thru an Exchange
 - Outsourced HR responsibility
 - Third party administrators
 - Provide health benefit administration
 - Initial eligibility and enrollment
 - Choice of coverages, company and benefits
 - Retiree options
 - Other worksite insurance products
 - Life
 - Dread disease
 - Disability
 - Accident
 - Pet insurance
 - COBRA enrollment



Employment Ends

- Health benefits when leaving employment
 - Employer health benefits cease, or
 - Retiree coverage if offered, or
 - Eligible for COBRA (and Medigap!)
 - *If Medicare eligible, or enrolled in Part A*
 - *No federal notice or information is sent or received*
 - Beneficiary must understand enrollment rules



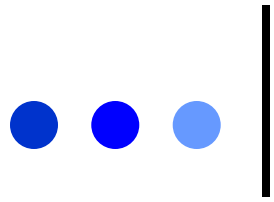
Medicare Part B Enrollment

- Part B enrollment is voluntary
 - No federal eligibility notice
 - Unless collecting Social Security benefits
 - 8 month SEP to enroll in Medicare following loss of employer health benefits
 - If SEP window not met late enrollment penalties apply
 - Lifelong premium penalties
 - 10% each 12 months following SEP
 - Restricted enrollment window (1st 3 months of year)
 - Late enrollment penalty applied
 - Benefits delayed after enrollment (Effective date July)



How COBRA Works

- COBRA primary health benefits
 - Same benefits as employed
 - Former employee pays
 - 100% of premium plus admin fee
 - **With or without Medicare benefits**
 - Medicare Secondary Payer rules don't apply
 - COBRA benefits are secondary
 - Regardless of Medicare enrollment
 - **Phantom Benefits**
 - **Primary benefit payments can be recoverable**
 - If **eligible** for Medicare (regardless of enrollment)
 - One example: \$150,000
 - If Medicare eligibility begins during COBRA
 - COBRA ends



State and Federal Guaranteed Issue Rights To Medigap Coverage

Guaranteed Issue = Without Health
Underwriting



● ● ● | General Rights To Medigaps

○ Rules triggering rights to a Medigap

- Open enrollment or IEP

- Guaranteed issue events

- No health underwriting, best price for age and location

- Categories

- First eligible for Part B
- Employment related
- MA Plan Changes
- MediCal Related
- The Birthday Rule



Initial Enrollment Period

- At age 65 (or older if enrollment is delayed)
 1. Can buy any Medigap
 2. Best price for age and location
 3. Health questions required, can't be turned down



○ Disabled and first eligible for Medicare

- CA law, **not a federal right**
- Same as above (1,2, and 3)
 - Fewer choices of Medigaps
 - A, B, C, F, (G), (K or L, M or N at insurer discretion)
 - Separate age related pricing allowed
 - New open enrollment period at age 65

1992 - 2020
28 years



Employment Related Rights

- Guaranteed Issue Medigap rights and employment
 - Loss of employer coverage
 - COBRA coverage exhausted
 - Conflicts with Medicare
 - “Senior COBRA” doesn’t apply
 - Loss or reduction of retiree benefits
 - Military retiree medical care changes
 - Military base closes
 - No longer eligible for care at military base
 - Moves away from military base care



MA Plan Changes

- Changes trigger guaranteed issue Medigap
 - Medicare Advantage Plan leaves the service area, or CMS closes plan
 - 120 days to apply for Medigap
 - State law added 60 days to federal requirement
 - MA plan increases premium or reduces benefits
 - Must apply to same company or affiliate as MA plan
 - **IF** company doesn't sell Medigap (Kaiser) **THEN**
 - MA cost changes must be 15% or greater
 - Can buy Medigap from any company



Medicare Trial Rights

- Medicare Trial Right rules for guaranteed issue Medigap
 1. **Only** at age 65 **AND** first enrolled in Part A
 - Doesn't apply when delayed enrollment in Part B
 - If disenrolls during first 12 months
 - Possible extension to 24 months
 - If no other MA plan available in service area
 - Choose Medigap
 2. Dropped a Medigap to enroll in MA plan
 - Very first time in MA plan, including prior to age 65
 - Must disenroll during first 12 months
 - Get previous Medigap, if not available choose another

MediCal: Loss or Changes

- Guaranteed Issue Medigap
 - Losing MediCal
 - Can choose A, B, C, F (G), K, L, M, N
 - Share of Cost imposed or changed
 - Can reduce SOC by premium
 - Can choose A, B, C, F (G), K, L, M, N
- Illegal to sell a Medigap to someone who has full MediCal benefits
 - If has a Medigap, can keep that Medigap

Annual Birthday Rule

- Switching Medigaps with no health screening
 - For 60 days beginning on birthday
 - Can choose any Medigap
 - With the same or fewer benefits
 - Extra benefits added don't count
 - From any company
 - May have lower premium
- **Must have a Medigap already to switch to another Medigap**



20 years
2000-2020

Medigap Regulators

- Medigap rules in federal law
 - NAIC Model Regulation specifies Medigap rules
- In CA insurers choose their state regulator
 - DMHC
 - 3 companies licensed
 - Blue Shield
 - Anthem
 - Health Net
 - Department of Insurance
 - Licenses all others
- Law is the same for both state regulators
 - H&S code for DMHC, and CIC for CDI





Examples of Fraud Issues

- Substituting MA plan application when applying for Medigap
- Posing or implying connection to federal government
 - Important information about changes in Medicare benefits
- Selling to people with full MediCal benefits
 - Federal and state penalties apply
- Encouraging or convincing an unsolicited change in coverage



Contact Information

- California Health Advocates

- **Sacramento Office** – (916) 231-5110

- 5380 Elvas Avenue, Suite 104, Sacramento, CA 95819

- Website

- <http://www.cahealthadvocates.org>

- **CHA Blog**

- <http://blog.cahealthadvocates.org>

Questions?



Answers

