

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

September 8, 2022

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Baltimore, Maryland 21244-8016

Re: PHE Unwinding Concerns for Dual Eligibles

Dear Administrator Brooks-LaSure,

Justice in Aging writes to request that the Centers for Medicare & Medicaid Services (CMS), in its preparation for the unwinding of the Public Health Emergency (PHE), take steps to particularly address the impact of the unwinding on individuals dually eligible for Medicare and Medicaid. Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable healthcare, economic security, and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries and populations that are most marginalized and excluded from justice such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

We appreciate CMS' many trainings and materials around the PHE unwinding. We also are very pleased to see the recently released notice of proposed rule-making that proposes long-awaited improvements to Medicaid rules that would significantly help older adults and people with disabilities obtain and retain Medicaid eligibility. However, more needs to be done to address several issues that put many individuals dually eligible for Medicare and Medicaid at great risk of losing coverage when the PHE ends, despite their higher probability of living on fixed incomes and continued eligibility. Prior to the pandemic, dual eligibles often experienced delayed enrollment, improper billing, or improper denials due in large part to poor coordination between Medicare and Medicaid. These issues will only magnify when the PHE unwinds.

When duals lose Medicaid coverage, they face a series of cascading events that can lead to significant disruptions in care and risk to their economic security. For example, duals who lose Medicaid eligibility lose access to home and community-based services, which can lead to hospitalizations and institutionalization in nursing facilities. Duals enrolled in integrated Medicare and Medicaid plans not only lose Medicaid-covered services, they also face disenrollment from these plans and disruption in accessing their Medicare providers and prescription drugs. Duals who lose Medicaid eligibility also must pay their Medicare premiums, which the Social Security Administration deducts automatically from their monthly check – often times deducting two to three months of premiums in one month. A reduction in monthly income of \$340 to \$510 can result in loss of housing and other economic harms.

Given the significant harm and disruptions dual eligibles face when losing Medicaid, we recommend the following actions:

I. Publicize States' Unwinding Plans

WASHINGTON

1444 Eye Street, NW, Suite 1100
Washington, DC 20005
202-289-6976

LOS ANGELES

3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
213-639-0930

OAKLAND

1330 Broadway, Suite 525
Oakland, CA 94612
510-663-1055

There is significant variation in how states will proceed with the unwinding, and even more variability across Medicaid populations. Yet states' unwinding plans are not widely available, and are difficult for stakeholders to access. We recommend that CMS require states to publicly post their unwinding plans in an accessible manner and that CMS provide a website with links to each jurisdiction's unwinding plans. CMS currently provides links to states' Medicaid waivers, ARPA spending plans, and Statewide Transition Plans (STP) for the Settings Rule. Creating a similar landing page would allow advocates and stakeholders to review their state's plans and provide targeted advocacy in advance of the end of the PHE.

II. Targeted Outreach to Dual-Eligibles

CMS has been providing monthly webinars for advocates on the PHE unwinding. The most recent webinar focused on maintaining benefits for children. We recommend a similarly focused webinar on dual eligibles, highlighting the obstacles duals face and offering best practices to prevent improper terminations. We also encourage CMS to release specific guidance through State Medicaid Director Letters and FAQs specific to dual eligibles.

III. Technical Assistance on Ex-Parte Reviews and Applying Equitable Reasonable Compatibility Standards for Non-MAGI Populations

Ex-parte reviews are crucial to streamlining redeterminations. Many dual eligibles receive SSI or Social Security with few other sources of income, and could have their financial eligibility determined through data matching from Social Security and other state agencies. Furthermore, duals typically have stable income and are unlikely to experience fluctuations in income, making ex-parte reviews particularly appropriate for this population. However, states frequently fail to engage in comprehensive ex-parte review for non-Modified Adjusted Gross Income (non-MAGI) beneficiaries, including duals, despite doing so with the MAGI population.

Some states have elected to utilize a reasonable compatibility threshold to streamline and expedite redeterminations by applying a percentage disregard of income. For example, if a person's self-attested income is reasonably compatible with federal data sources (within 20% of the applicable FPL threshold), the individual does not need to provide verifications to resolve the discrepancy and is found eligible for Medicaid. Although reasonable compatibility thresholds can be applied to non-MAGI populations, some states are not applying a higher beneficial standard to non-MAGI populations due to technical system limitations. We urge CMS to provide guidance and technical assistance to states about the tools available to accurately utilize ex parte reviews and to extend the benefits of higher reasonable compatibility thresholds to non-MAGI populations.

IV. Additional Guidance on PHE Unwinding for Medicaid-Only and Dual-Eligible Populations

a. PHE unwinding and Settings rule

Due to COVID-19 and other delays, the deadline for full implementation of the HCBS Settings Rule is in March 2023, which may be within a few months of the PHE ending. Yet, as of August 2022, less than half the states have completed final STP approval. In fact, the most

recent final STP approval was completed in February 2020, over two years ago. Due to the urgency of the pandemic, states have been prioritizing COVID-19 related Medicaid issues and thus not focusing on the Settings Rule implementation. Increased workforce shortages among providers and Medicaid offices, and the resulting case backlogs, will likely worsen both the PHE unwinding and Settings Rule implementation. Recognizing these challenges, CMS should issue materials for states on how to navigate these related issues.

b. Appendix K Flexibilities

Nearly every state has utilized the Appendix K emergency waiver to provide additional supports to providers and beneficiaries under the 1915(c) waiver. For example, increasing rate payments and allowing legally responsible persons to serve as paid caregivers have provided some degree of relief to beneficiaries. If these provisions end, it would only add to the current workforce crisis. Similarly, many states have used Appendix K to allow beneficiaries to receive services in settings that might otherwise have violated the Settings Rule. We recommend CMS provide states with training and technical assistance on how they can transition into compliant settings by including Appendix K flexibilities in 1915(c) waivers and State Plan Amendments (SPA) to minimize service disruptions.

Thank you for your time and consideration of the many challenges facing dual eligibles in the unwinding of the PHE. We would appreciate scheduling a meeting to discuss this further. Please feel free to reach out to Gelila Selassie at gselassie@justiceinaging.org to discuss next steps.

Respectfully,



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