JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-10824
7500 Security Boulevard
Baltimore, MD 21244-1850

Submitted electronically via regulations.gov

November 7, 2022

Re: Proposed Collection of Information: Integrated Annual Notice of Changes and Evidence of Coverage for Dual Eligible Special Needs Plans in Certain States (CMS-10824)

Justice in Aging appreciates the opportunity to submit comments in response to the above-referenced proposed collection of information on the Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents for people dually eligible for Medicare and Medicaid. Although the comments below focus primarily on the ANOC, the themes in our comments are also applicable to the EOC.

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 individuals and populations that have traditionally lacked legal protection such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

Justice in Aging appreciates the efforts taken by CMS to improve the ANOC's readability and accessibility. This process is undeniably challenging, especially given the demographic diversity of people dually eligible for Medicare and Medicaid. Compared to Medicare-only recipients, dually eligible individuals are more likely to be female, Black or Latino, and limited in English proficiency (LEP). Additionally, 39% of people dually eligible for Medicare and Medicaid have less than a high school level of education. Given the intersectional identities and corresponding needs of individuals dually eligible for Medicare and Medicaid, our analysis focuses on facilitating more meaningful access to the ANOC's content.

Consumer Testing

Gathering input about how to increase the linguistic and cultural relevance of the ANOC should begin with beneficiaries. To understand how consumers experience the ANOC, CMS should solicit feedback from diverse voices reflective of the demographic diversity of people dually eligible for Medicare and Medicaid. For example, listening sessions should be conducted in languages beyond English and Spanish. Including consumers in the ANOC development process can help CMS to deliver information in a more meaningful manner to people dually eligible for Medicare and Medicaid.

Although consumer testing is needed to understand how beneficiaries interact with this document, our analyses identified opportunities to improve the document's readability. These suggestions include: making the document more personalized to the beneficiary; using plain and standardized language; implementing language and accessibility improvements to increase beneficiary understanding of the content; considering alternative methods, such as images and symbols, to convey the information in a more meaningful manner; and clarifying potentially confusing aspects of the document.

Personalization

The ANOC is an important document, as it informs plan members of key changes that may influence their decision to continue membership in the plan. To that end, the ANOC should be person-centered, provide information with specificity, and deliver information in a user-friendly manner. To achieve its purpose, highlighting the upcoming changes to the plan at the beginning of the document quickly alerts enrollees of changes that may directly impact them. In its current form, information about plan changes does not appear until page 8 of the document. To make it easier for enrollees to comprehend upcoming changes, we suggest adding a summary with highlights or bullet points on the first or second page of the ANOC. For example, the summary section could flag that the plan name or prescription drug co-payments are changing and then reference the page number and accompanying section where the change is discussed in more detail. Given that changes could influence a consumer's decision to remain in the plan, information about how to change plans can also be raised earlier in the document than in its current location on page 16.

We also suggest that the document be personalized to the beneficiary. For example, on page 3, instead of giving Dual Eligible Special Needs Plans (D-SNPs) the option to address the document to the member by name, CMS should make using the individual's name a requirement.

Encourage the Use of Plain and Standardized Language

The ANOC and EOC should use plain language when possible. Plans must explain acronyms and less common terms in consumer-friendly language and provide relevant examples. Long-term services and supports are referenced multiple times in the EOC chapters; although this is a common term used by health care providers and health plans, the meaning may be obscure to the average consumer. Examples are helpful to illustrate services offered under long-term services and supports or an explanation of how care coordination would benefit a consumer.

CMS should also consider developing standardized language to describe care coordination and care coordinators. While plans should continue to have the discretion to describe care coordination to some extent, developing standardized language or simple requirements, such as using examples, will ensure that all plans provide a basic description of care coordination that is meaningful.

Language and Accessibility Considerations

Current regulations permit hard copies of the ANOC and EOC to be mailed or delivered electronically.[1] Plans should be required to mail these documents by default unless the consumer affirmatively elects to receive these communications by electronic mail. Dually eligible individuals may not have ready access to technology, may not frequently check email communications, or may need assistance using technological devices. As a default, these materials should be delivered by mail while allowing consumers to elect electronic delivery.

As previously indicated, people dually eligible for Medicare and Medicaid are more diverse than Medicare-only recipients. Therefore, analysis of the ANOC must consider how to improve the document's accessibility for subpopulations, including LEP enrollees. Information about alternative languages and formats is not found in the ANOC until page 6, section B1. To increase the prominence of information about translated materials and alternative formats in the ANOC, we suggest that CMS provide this information as an insert or cover sheet. Consumers that receive the ANOC in English, but need translated materials or alternative formats, may not read to page 6 of the document to learn they can receive these materials in the language or format they need. An insert or cover sheet quickly alerts the consumer that translated and alternative format materials are available and provides critical information on how to request these materials.

In addition to providing this information earlier in the document or as an insert, we encourage CMS to explore options to relay information about the plan's language and accessibility features in as many languages and formats as possible. For example, CMS might consider including an insert containing information about language assistance services and alternative document formats in the threshold languages in the plan's geographic area. In all respects, D-SNPs and Medicaid plans serving the same geographic area should be subject to the same language accessibility requirements, and should be whichever is most favorable to the beneficiary. It would be confusing for an enrollee to receive the ANOC and EOC in English and materials from their Medicaid plan in their preferred language. Additionally, information about language assistance services could be included at the bottom of every page of the document to improve access.

The ANOC currently contains optional language for plans. This content, for example, on page 2, provides plans with the option of using "regionally appropriate terms or common dialects in translated models." Regionally appropriate language is more likely to resonate with specific communities, improving the document's usability for particular subpopulations. When regionally appropriate terminology is available, this content should be included in the document and, to ensure relevance, be subject to beneficiary testing.

As another example, plans currently have the option of providing translated materials in large print. Accessibility features should be available to all enrollees, regardless of the language of the materials they receive. Therefore, plans should be required to provide translated materials in

[1] 42 C.F.R. 422.2267(d).

large font, upon request, to consumers. We do not imagine that the requests for large print materials would be so great that they would cause a significant financial burden to health plans.

Alternative Methods of Relaying Content

We encourage CMS to explore options beyond text to relay information in the ANOC. To demonstrate this need, consider the consumers that do not recognize their enrollment in Medicare until they are shown a picture of a Medicare card. Simple visuals, such as a pill to denote medicine or an apple to signify preventative care, as found in The Medicare & You handbook, help orient readers to the subject matter outlined in the accompanying text. Additional formatting choices in the handbook, such as charts, text boxes, and arrows containing the word "Important," direct the reader to pay close attention to specific content while breaking up the dense text to make the document more visually accessible.[2] While formatting suggestions gathered from consumers, such as plain language and bulleted lists, have been incorporated into the document, additional efforts could be taken to advance the document's accessibility. We encourage CMS to explore opportunities to use images and formatting alternatives to make the ANOC more user-friendly.

Beneficiary outreach is yet another method to enhance members' understanding of their benefits. CMS might consider directing plans to discuss beneficiary-specific changes outlined in the ANOC with members as part of their ongoing case management duties. For example, the ANOC currently instructs members to contact Member Services to discuss changes related to their medication coverage. Instead of placing the sole responsibility of outreach on the beneficiary, we alternatively suggest that plans contact enrollees to discuss plan changes, answer questions, ensure access to accessibility features, and assist with benefits navigation. We believe that this additional support from plans will enhance members' understanding of their benefits, improve access to critical resources like medications, and ultimately improve their health outcomes.

Precedence for this type of outreach already exists in California. Health plans participating in California's Financial Alignment Initiative (FAI) are conducting telephone calls to their members to alert them of the transition into exclusively aligned D-SNPs.[3] Telephone calls are person-centered, ensure enrollees are aware of critical changes, and offer an opportunity for enrollees to ask questions about their plan.

Confusing Elements

Our analysis identified a few areas of the ANOC that likely fuel confusion. For example, cost-sharing references throughout the document may confuse Qualified Medicare Beneficiaries (QMBs) or those full-benefit dual eligibles who do not have costs associated with their benefits. At the same time, removing cost-sharing references altogether may result in a need for more awareness amongst consumers of the savings related to their dual eligibility status. As this

[2] Centers for Medicare and Medicaid Services, Medicare & You 2023, available at https://www.medicare.gov/publications/10050-Medicare-and-You.pdf.
[3] California Department of Health Care Services, Managed Long-Term Services and Supports and Duals Integration Workgroup, at slide 34, October 19, 2022.

example demonstrates, beneficiary testing is needed to better understand how consumers interpret this information to improve messaging.
As another example, when the document encourages readers to reference a section of the ANOC or EOC, a brief explanation should accompany the section name to help the reader understand its content. We urge CMS to utilize language beyond "Refer to Section E," as found on page 5, and instead use language like "Refer to Section E for information about changes to our drug coverage," as seen on page 7. This additional information helps to orient the reader to the section's content and makes the document easier to navigate.

Conclusion

Justice in Aging appreciates concerted efforts on behalf of CMS to make the ANOC and EOC materials more accessible to persons dually eligible for Medicare and Medicaid. We look forward to working with the agency to implement these suggestions in order to enhance the quality of care for millions of people with Medicare and Medicaid. If any questions arise concerning this submission, please contact Tiffany Huyenh-Cho, Senior Staff Attorney, at thuyenhcho@justiceinaging.org or Hannah Diamond, Policy Advocate, at hdiamond@justiceinaging.org.

Sincerely,

Amber Christ
Managing Director, Health Advocacy