

September 20, 2018

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).¹ CMS subsequently extended this policy by one year,² and recently expanded it to people with Marketplace coverage who did not enroll in Medicare during a qualifying Special Enrollment Period (SEP).³ For both populations, this important relief is set to expire on September 30, 2018.

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—one year, at a minimum. Looking ahead, we also urge the agency to develop a permanent relief pathway for those who made an enrollment error during the period when misinformation was widespread.

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 this policy, CMS was responding appropriately to the needs of Marketplace enrollees who became newly eligible for Medicare as the Marketplaces were being established and heavily promoted. 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.

While we shared the agency's initial hope that the confusion surrounding Marketplace coverage and Medicare Part B enrollment would be resolved quickly, this has unfortunately not been our experience. Some of our organizations continue to see serious problems with the time-limited equitable relief application process and current outreach and education strategies that are preventing some who are eligible from accessing this relief. In extending and expanding this policy in the past, CMS correctly

¹ 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>

² CMS, "Fact Sheet: Assistance for Individuals with Medicare Part A and Marketplace Coverage Information for SHIPs and Marketplace Assisters," (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>

³ 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

recognized that barriers to understanding and navigating these coverage interactions endure. We appreciate the agency's attention to this policy, and we believe continuing this policy for the reasons and in the manner outlined below is both warranted and appropriate.

First, we urge CMS to retain the existing policy through at least September 30, 2019. This extension is necessary to ensure those who are eligible for time-limited equitable relief have the time and information they need to access it, and to give the federal government additional time to ensure updated, accurate information is reaching those currently making enrollment decisions.

As noted above, many of our organizations continue to observe—and be alarmed by—the challenges people face when attempting to access this relief. Of utmost concern is the misinformation many report receiving from the Social Security Agency (SSA) about the availability of and/or their eligibility for this opportunity. 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. We are concerned that if this policy is allowed to expire this year, these currently correctible mistakes would become irreversible, to the detriment of the impacted beneficiaries. By continuing this policy—and associated intra-agency education efforts—CMS could increase awareness of time-limited equitable relief within SSA, help better prepare its employees, and give the agency more time to process applications. An extension would also give beneficiaries who may have abandoned their applications due to incorrect or incomplete information from SSA time to seek a resolution.

Additional time would also aid in CMS's efforts to identify, notify, and educate people who only very recently became eligible for time-limited equitable relief, due to an important policy change. In late May, CMS expanded this policy to those who had a Special Enrollment Period, rather than an Initial Enrollment Period, during the applicable timeframe.⁴ These individuals have only had a few months to learn about and access this relief, and some CMS materials—including those distributed via a recent State Health Insurance Assistance Program (SHIP) alert⁵—have not yet been updated to most accurately reflect the expansion. Further, some who now qualify may have previously applied and been turned away, and may not yet know about the recent eligibility shift. We are concerned this short time frame and the ambiguous or inaccurate materials to which these individuals continue to have access is preventing some who are eligible from knowing about and pursuing time-limited equitable relief.

An extension would also give CMS time to reach eligible beneficiaries who are beyond the agency's current notification methods. While we appreciate CMS's efforts to inform affected beneficiaries about time-limited equitable relief, we have ongoing concerns about the narrow scope of the agency's outreach. Specifically, while we commend CMS for regularly sending Periodic Data Matching (PDM) notices to alert certain beneficiaries about time-limited equitable relief, the agency's reliance on these notices as its primary targeted communication to eligible beneficiaries is problematic, 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 paying late enrollment penalties. Currently, states that operate their own Exchanges are not required to inform their enrollees about time-limited equitable relief. While some state-based Marketplaces may do so voluntarily, there is no clear encouragement or guidance from CMS to facilitate this outreach, nor is

⁴ *Id.*

⁵ CMS, "Important Notice about Enrolling in Medicare Part B," CMS Product No. 12024. (August 2018). Note that this alert does not provide information about the expanded policy's applicability to those currently paying a Part B late enrollment penalty.

there any formal or informal federal oversight to help ensure the accuracy of any such state-provided materials. Similarly, some beneficiaries whose reliance on the federal materials available to them at the time of their IEP or SEP caused them to delay Part B enrollment have since dis-enrolled from Marketplace coverage, enrolled in Part B, and been assessed a late enrollment penalty. These individuals are also beyond the reach of the PDM notices, and would have no way of knowing about the relief pathway currently available to them. To 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 access it. As additional time is needed to do so effectively, we urge the agency to issue a year-long extension.

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”⁶ that they did not have access to “at the time of their Medicare IEP, Part B SEP...or initial enrollment in the Exchange.”⁷ 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 and/or SEP-eligible beneficiaries.

Since CMS has not yet ensured that people eligible for or seeking time-limited equitable relief have adequate information and accessible processes for obtaining it, and has not yet shown that its updated materials are sufficient 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.

Second, we strongly urge CMS to develop and implement a permanent solution for affected beneficiaries. We appreciate 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 previous federal misinformation. However, we do not see any reason for the agency to terminate the availability of relief for those who made an enrollment error during the period when misinformation was widespread.

Accordingly, we urge CMS to establish a permanent policy for equitable relief for people who had an IEP or SEP between April 2013 and the date at which the agency certifies the informational deficit has been eliminated, and who were enrolled in a Marketplace plan and Premium-free Part A during that time—regardless of when the person seeks relief. Such a policy should be in place in advance of the agency’s assurance that its materials and outreach have effectively cured the persistent climate of confusion.

Thank you for your consideration. As outlined above, the factors that warranted the creation of this time-limited equitable relief policy continue to exist. As a result, so too does the need for this relief. We urge CMS to ensure this pathway remains open to those who need it, now and in the future, by extending it as written for at least one year and by developing a permanent solution for those who will remain impacted.

⁶ 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> (Note that this fact sheet, still on CMS.gov, indicates that relief terminates in 2017)

⁷ 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

Sincerely,

AARP
ACCSES
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 Health Insurance Plans (AHIP)
America's Physician Groups
American Association of Service Coordinators
American Association on Health and Disability
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: Demetrios Kouzoukas, Principal Deputy Administrator & Director of the Center for Medicare