

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

June 11, 2018

Sarah Brooks, Deputy Director, Health Care Delivery Systems
California Department of Health Care Services
Sacramento, California 95812
Via email: Sarah.Brooks@dhcs.ca.gov; info@calduals.org

Greetings:

Thank you for the opportunity to comment on whether the Department of Health Care Services (DHCS) should apply for a waiver to allow dual eligibles to retain their continuous special enrollment period (SEP) when enrolling into and disenrolling from Cal MediConnect (CMC) plans. We write to encourage DHCS to apply for a waiver in order to maintain a consumer protection fundamental to the Cal MediConnect demonstration program, and for reasons we outline below, we urge DHCS to seek a waiver from CMS that would allow dual eligibles in Coordinated Care Initiative (CCI) counties to retain their continuous SEP irrespective of plan type.

Background

Dual eligibles have historically enjoyed a continuous SEP under Medicare rules, allowing them to change between Medicare Advantage and Part D plans. Effective January 2019, CMS changed the continuous SEP for duals to a onetime-per-calendar quarter election between January through September, retaining the annual election period from October to December.¹ DHCS seeks input on whether it should apply for a waiver to allow for a continuous SEP for dual eligibles seeking to enroll or disenroll from Cal MediConnect. The dual-eligible SEP has always been a population-based SEP that was universally available to all dual eligibles and was not tied to the type of Medicare product the individual joined.

A waiver would ensure that promises made to CMS participants are kept

In seeking a waiver, DHCS must consider the intent of the CCI and the underlying promise of the Cal MediConnect program. At its core, the financial alignment initiative demonstration is a test. By design, dual eligibles have been able to enroll and disenroll freely in Cal MediConnect at any time to try out whether this new model of care that integrated Medicare and Medi-Cal worked for them, their particular medical conditions, and their providers. Leaving the choice of when to enroll and disenroll to dual eligibles themselves promoted Cal MediConnect's vision as a person-centered program designed to empower consumers to make educated healthcare

¹ 42 C.F.R. sec. 423.38(c)(4)(i), available at: www.gpo.gov/fdsys/pkg/FR-2018-04-16/pdf/2018-07179.pdf.

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

choices. Keeping in line with this principle, the Department's communications about the Cal MediConnect program and consumer enrollment rights have repeatedly assured dual eligibles of their right to enroll and disenroll at any point.² Dual eligibles relied on those assurances when joining Cal MediConnect plans. A waiver of the SEP is necessary to keep the Department's promise and maintain the trust that has taken years to build in the Cal MediConnect program.

A continuous SEP also is essential in light of the Department's decision to pilot brokers in CMC. The pilot is new, and it is not clear how well or poorly it will work. During this period, it is particularly important that beneficiaries who may have been swayed by brokers either to join or leave CMC plans have an easy opportunity to reverse their decisions. Although beneficiaries can seek a SEP when they can show broker misconduct, advocates have experienced difficulty in enforcing Medicare marketing guidelines. Further even when there is not misconduct, beneficiaries still misunderstand representations of brokers or feel pressure. They need to be able to undo decisions and should not be trapped for months in plans that are not meeting their needs.

A waiver should apply to all dual eligibles in CCI counties

We strongly recommend that DHCS not limit its waiver request to coverage of dual eligibles seeking to enroll in or disenroll from Cal MediConnect plans. Instead, we encourage the Department to seek a broader waiver from the Centers for Medicare and Medicaid Services (CMS) that would waive the new SEP for all dual eligibles in the seven CCI counties, regardless of Medicare product and in essence, maintaining the status quo. We firmly believe DHCS can ask for this broader waiver from CMS, particularly given the impact of the new SEP on dual eligibles residing in CCI counties.

Administrative efficiency. By maintaining the status quo, a broad waiver is the most practical from a systems and programs perspective. It alleviates the need for the Department to change enrollment systems to operationalize the new SEP and/or one that is specific to the type of Medicare plan, keeping enrollment rules and systems consistent with the Medi-Cal program. It also maintains consistency with the continuous SEP for PACE. Finally, the efforts necessary to educate and train health plans, their agents and brokers, HICAPs and other counselors, and community members on the intricacies of a SEP linked to the type of Medicare product would be extensive and cumbersome. It is particularly unrealistic to expect that fully tested systems changes and well-executed training of all relevant parties in the complexities of a limited waiver could be achieved before the January 2019 implementation date. A waiver leaving a

² DHCS, "Cal MediConnect and Medi-Cal Managed Care Plan Resource Guide," p. 10, available at: www.calduals.org/wp-content/uploads/2016/10/IMC-Resource-Guide_0916.pdf; DHCS, "Your Rights & Responsibilities as a Plan Member," available at: www.calduals.org/wp-content/uploads/2015/05/Rights-Responsibilities_5.20.15.pdf; DHCS, "What You Need to Know About The Coordinated Care Initiative," slides 7, 15, available at: www.calduals.org/wp-content/uploads/2017/10/CCI-Bene-PPT_10.25.17.pdf.

continuous SEP in place for all dual eligibles in CCI counties would avoid the need for any systems changes and for any additional training.

Messaging. A broader waiver is also easiest to message. Dual eligibles do not need to be notified of changes to the SEP because their rights remain the same. In our experience from passive enrollment and elsewhere, program design and notices must remain as simple as possible for beneficiary comprehension; notices explaining the new SEP or a SEP linked to CMC would be far from simple and likely fail in communicating meaningfully with dual eligibles, furthering confusion.

Conclusion

We recognize that a broader waiver is not what DHCS had originally envisioned in soliciting comments on a potential waiver of the new SEP for dual eligibles. However, we believe it is necessary to maintain a longstanding consumer protection and the most practical given the realities of this population and complexities involved.

If you have any questions, please contact Denny Chan at dchan@justiceinaging.org. We again thank you for the opportunity to comment and look forward to working together to improve the Cal MediConnect program.

Sincerely,

Justice in Aging