



CMA Weekly Alert – May 31, 2007

MEDICARE COST-SHARING IN MEDICARE ADVANTAGE PLANS: WHO PAYS FOR DUAL ELIGIBLES?

More than one million Medicare beneficiaries who also have Medicaid benefits (dual eligibles) are enrolled in Medicare Advantage plans. This number represents 15% of dual eligibles, up from 3% in the late 1990s. A little more than half of the one million are enrolled in Medicare Advantage Special Needs Plans, specifically targeted for dually eligible people.

Because most of these individuals are eligible for the full array of services offered under their state Medicaid plans, including services not covered by Medicare, they may not be receiving much value by being in Medicare Advantage plans, whose selling points are often the provision of benefits not available in original Medicare. Advocates will want to examine the offerings of a Medicare Advantage plan, even a Special Needs Plan, extremely carefully to determine if the plan does, indeed, offer anything the client is not already entitled to under Medicaid.¹

Regardless of the value of extra benefits, these individuals should at least be getting the benefits that are available to them under Medicare Parts A and B. And, to the extent that they are Qualified Medicare Beneficiaries (QMBs), they should not have to pay any cost-sharing including premiums, deductibles or coinsurance, for Medicare-covered services provided by their Medicare Advantage plan.

In recent weeks, the Center for Medicare Advocacy has fielded many inquiries about states' obligations to pay cost-sharing for their dual eligibles in Medicare Advantage plans. This *Weekly Alert* addresses that issue.

What Are States Required to Pay?

Medicaid law is silent on states' obligations to pay Medicare cost-sharing for duals who are *not* QMB participants. On the other hand, guidance from the Centers for Medicare & Medicaid Services (CMS) is clear about states' obligations to pay such cost-sharing for duals who *are* QMB participants. The CMS guidance reflects the statutory grant of permission to states (but not mandate) at 42 U.S.C. §1396d(p)(3), to pay Medicare Advantage premiums for QMB participants.²

The significant question, therefore, becomes who are Qualified Medicare Beneficiaries? The law says they are people with Medicare Part A and with incomes up to 100% of the federal poverty level (FPL) and countable assets of not more than \$4,000 for an individual or \$6,000 for a couple. They can be, but do not have to be, eligible for full Medicaid services. The QMB program pays the individual's Medicare premiums and cost-sharing.

¹ See Alissa Halperin, Patricia Nemore and Vicki Gottlich, "What's So Special About Medicare Advantage Special Needs Plans? Assessing Medicare Special Needs Plans for Dual Eligibles," *Marquette Elder's Advisor*, Vol 8, No. 2 (Spring 2007)

² 42 USC § 1396d (p) (3). See Letter of June 30, 2000 from Director, Disabled and Elderly Health Programs Group; Subject: Policy Memorandum on Medicaid Obligations to Pay Medicare Cost-sharing Expenses for Qualified Medicare Beneficiaries in Medicare Health Maintenance Organizations or Competitive Medical Plans or Medicare Plus Choice Organizations – INFORMATION, available at www.medicareadvocacy.org/MA_06302000memoReQMBCostSharingInMA.pdf

Because most categories of Medicaid for older people and people with disabilities require that the individual's income be not more than 100% of the federal poverty level, most elderly Medicaid recipients and nearly all of those with disabilities who have Medicare Part A should also qualify for the QMB program. The exception to this would be people who qualify for Medicaid as medically needy because, while their income is above the normal level for qualifying, they have very high medical bills. These individuals would generally not qualify as QMBs. However, even many Medicaid recipients who should qualify for QMB may not. Although a CMS guidance for the QMB program directs states to screen all of their dually eligible beneficiaries for QMB eligibility,³ it is not clear that states have actually done so. In 1991, the Health Care Financing Administration (HCFA) [the previous name of CMS] identified over 2.3 million dually eligible beneficiaries who were eligible for, but not enrolled in, the QMB program.⁴ More recent figures are not available to the Center.

Thus, your state might have many dually eligible individuals whose incomes are less than the QMB income standard, who are, nevertheless, not enrolled as QMBs and thus are not, technically speaking, entitled to have the state pay their cost-sharing (in original Medicare or in a Medicare Advantage plan). Advocates might inquire of their states whether they have, in fact, enrolled all those eligible into the QMB program.

Medicaid Recipients Not Automatically Eligible for Medicare Part A

An additional wrinkle pertains to certain very low-income elderly SSI-only Medicaid recipients. Because they do not have enough work quarters (credits attributed toward eligibility for future Social Security benefits), they do not receive Social Security retirement checks and they do not qualify for premium-free Part A. Because Part A is a prerequisite for QMB, they cannot be found eligible for QMB without first enrolling in Part A, which they cannot afford. The Part A premium for 2007 is \$410 per month; the monthly income of a person at 100% FPL is \$851.

Thirty-five states and the District of Columbia have agreements with CMS regarding Part A enrollments. These agreements allow them to enroll Medicare beneficiaries eligible for QMB benefits into Part A at any time of the year and without having to pay any late enrollment penalty. In 1991, despite the existence of the agreements, HCFA found that 145,000 dually eligible individuals in states with Part A buy-in agreements had not been enrolled by their state into Part A and thus had not been enrolled in the QMB program.⁵ More recent information is not available.

In the remaining fifteen states without Part A buy-in agreements,⁶ individuals can only enroll in Part A during the first three months of each year, after their initial enrollment period. Moreover, the state paying for the QMB's Part A premium will have to pay any late enrollment penalty that applies. Under a process created in the early 1990s by HCFA, a low-income Medicare beneficiary wishing to qualify as a QMB would go to her Social Security office between January and March and ask to enroll in Part A on the condition that her state would pay the premium (which is part of QMB cost-sharing). She then would go to her state Medicaid program and show them her "conditional" enrollment in Medicare Part A and ask to enroll in the QMB program. When the Part A became effective, her QMB benefit could become

³ State Medicaid Manual, Part 3, Eligibility, Section 3490.5, available at www.medicareadvocacy.org/MA_StateMcaidManPt3EligibilitySec3490.pdf

⁴ See Letter of November 22, 1991 from Director, Office of Medicaid Management, MB, Subject: State Requirement to Pay Medicare Premiums for Qualified Medicare Beneficiaries (QMB) – ACTION, [Nov. '91 letter] available at www.medicareadvocacy.org/MA_11121991MemoOffofMedMgmt.pdf

⁵ Id.

⁶ These states do NOT have such agreements with CMS, meaning that their potential QMBs can only enroll in Part A between January and March each year, with coverage effective the following July 1: AL, AZ, CA, CO, IL, KS, KY, MO, NE, NJ, NM, OR, SC, UT, VA

effective.⁷ In 1991, HCFA identified about 215,000 QMB-eligible-but-not-enrolled individuals in the states without Part A buy-in agreements.⁸

Conclusion

The answer, then, to the question of whether states are obligated to pay cost-sharing for dual eligibles in Medicare Advantage plans is a complicated one, but for most dual eligibles, the answer would be yes, if they are QMBs. Advocates are advised to determine whether their states screen all current elderly and disabled Medicare beneficiaries on the Medicaid roles for QMB eligibility, as they are required to do, and to help those Medicaid beneficiaries without premium-free Part A to become enrolled in Part A so they can qualify as QMBs.

The documents linked to this Alert will allow advocates to approach their states to assure that the states are 1) Paying co-pays for their QMBs in Medicare Advantage plans, 2) Screening all dually eligible beneficiaries and enrolling them in QMB if they are eligible and 3) Assisting those dual eligibles with incomes under 100% FPL who are lacking Part A to enroll in Part A so they may also get QMB benefits. If your state is not doing these things and is not willing to undertake them, advocates are advised to contact their CMS Regional Office. On the issue of co-pays to Medicare Advantage plans, advocates can contact Christine Gerhardt (christine.gerhardt@cms.hhs.gov), at (410) 786-0693.

For more information, contact attorney Patricia Nemore (pnemore@medicareadvocacy.org) in the Center for Medicare Advocacy's Washington, DC office at (202) 216-0028.

⁷ See Letter of February 15, 1989 to Jim Peterson, Assistant Director, Division of Medical Assistance, Department of Social and Health Services, Mail Stop HB-41, Olympia, Washington 98504-0095 from Chief, State Medicaid Operations Branch, HCFA Region X re SSA-795 Enrollment Process, available at www.medicareadvocacy.org/MA_02151989JimPetersonLtr.pdf

⁸ See Nov. '91 letter, *supra* note 3.