



National Senior Citizens Law Center

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Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

Dear Dr. McClellan:

The undersigned organizations, which represent older people and people with disabilities, seek your immediate assistance on an urgent matter affecting low-income Medicare beneficiaries and the transition to Medicare Part D. We believe that it is critical to the health of millions of people to ensure that all Medicare beneficiaries receive medically necessary prescriptions under Medicare Part D as provided by law.

We appreciate that the Centers for Medicare and Medicaid Services has taken a number of steps to assure coverage for individuals eligible for both Medicare and Medicaid (“dual eligibles”). Those efforts are not enough, and in many instances, the systems put in place are not working. With each passing day, it is more and more apparent that there is a widespread failure of access to prescription drugs and that these problems are not being resolved by new CMS instructions to plans and pharmacies. The problems demonstrate both that the necessary information is not filtering down to the operational level at either plans or pharmacies, and that the systems in place are grossly inadequate to address the need in the appropriate time frame.

We seek assistance on behalf of our clients for these and other problems:

1. Dual eligibles were not auto-enrolled into a Part D plan as required, or were enrolled but pharmacists are unable to confirm such enrollment.
2. Individuals who chose and enrolled in a Part D plan or who changed plans from the plan into which they were auto-enrolled have received no proof of their enrollment. This is true even for those who enrolled in mid-November.

3. Dual eligibles are charged a \$250 deductible or are asked to pay the regular co-payments or co-insurance for prescriptions, rather than the Low-Income Subsidy (“Extra Help”) amounts.
4. Individuals who relied on formulary information on www.medicare.gov when they chose a plan are being told at the pharmacy that their plan does not cover their medicine.
5. Individuals are still not being given transitional first fills of medicines, or they are being given less than a 30-day supply, most commonly a 2-, 3-, 5- or 15-day supply.
6. Individuals, including dual eligibles, are being asked to pay for prescriptions and to submit their bills to their plans. We are hearing from individuals who cannot afford life-sustaining or life-saving medicines and so are going without them.
7. Individuals are still not receiving their medicines under the transition process when a plan formulary has a prior authorization or step therapy requirement.
8. Individuals, family members and other authorized representatives who relied on the *Medicare & You Handbook* when selecting a plan are now discovering that the plan they chose is not eligible for the Low-Income Subsidy. They cannot afford the premiums and higher cost sharing until they switch plans.
9. Individuals still cannot get through on the telephone to 1-800-MEDICARE and/or to their plans.
10. When reached, plan customer service representatives still do not know answers to questions or do not give correct information.
11. When individuals finally get through to plans or to CMS, they discover that they cannot be assisted because information about them—birthdates, addresses and spelling—doesn’t match. In some instances the information was as much as 15 years out of date.
12. Advocates continue to encounter pharmacists, including those at big chains, who are unaware of the E-1 data system, of the point of sales process, and/or of the transitions process.
13. Pharmacies continue to report difficulty in getting through on the pharmacy hot-line, getting through to plan customer service representatives, and using the E1 data system.
14. Despite the recent memos from CMS, some pharmacists have told advocates that they cannot spend the inordinate amount of time required to verify every enrollment or prescription amount and are refusing to do so.

15. Individuals are not being informed of their right to seek an exception if a drug is not on the formulary; they are told they must get a different prescription.
16. Individuals who try to call their plan to find out about prior authorization requirements and appeals cannot get through to the plans.
17. Advocates report problems to CMS or Regional Offices but still have not seen meaningful responses.
18. Nursing home residents are being charged co-pays. Facilities cannot determine the plans of their residents.

We ask CMS to immediately take the follow steps to protect Medicare beneficiaries:

1. Ensure that all dual eligibles be able to leave a pharmacy with medically necessary prescriptions. The POS Wellpoint option needs to function as a backup claims processor when the enrollee's plan does not process claims or will not provide transitional supplies, or another plan must be put in place immediately. CMS can reconcile payment later, but plans should be on notice that they will be penalized for failing to provide transitional supplies or properly process claims, and pharmacies must be assured that they will be reimbursed for filling prescriptions for dual eligibles.
2. Ensure that states are given a clear message that any stop-gap Medicaid coverage for dual eligibles will be paid by CMS, and that CMS will collect from the PDP or MA-PD that should have processed the claim. Several states, including Massachusetts, Connecticut, Vermont, New Hampshire, Maine, South Dakota and North Dakota, have declared states of emergency and/or have decided to resume Medicaid payment for prescriptions for dual eligibles on a temporary basis; advocates in other states are requesting similar action.
3. Respond immediately to complaints by beneficiaries, advocates, and others concerning plan operations. Complaints should be acknowledged when received and follow-up information should be provided to the complainant.
4. Exercise its enforcement authority under 42 C.F.R. §§ 432.750-423.760 and impose appropriate sanctions against any Part D drug plan that:
 - a. Fails to maintain sufficient staffing to respond in a timely manner to inquiries by beneficiaries, pharmacies and others.
 - b. Fails to provide a transition supply of medicine, or fails to provide a 30-day supply of drugs as indicated to CMS.
 - c. Provides incorrect formulary information to CMS, pharmacies, beneficiaries and others, or changes its formulary before March 1.
 - d. Fails to provide information about the exceptions and appeals process.
 - e. Fails to maintain a system to respond immediately to requests for prior authorization, exceptions or appeals.

Thank you in advance for your assistance in this matter. We are available to meet with you to discuss further strategies to protect people with Medicare.

Sincerely yours,

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On Behalf Of:

AIDS Institute
AIDS Project Los Angeles
Alzheimer's Association
American Academy of HIV Medicine
Arizona Center for Disability Law
Bazelon Center for Mental Health Law
California Health Advocates
Coalition of Institutionalized Aged and Disabled
Coalition of Voluntary Mental Health Agencies, Inc.
Community Legal Services, Philadelphia
Consumer Center for Health Education and Advocacy, San Diego
District of Columbia Primary Care Association
Families USA
Florida Community Health Action Information Network
Florida Justice Institute, Inc.
Florida Legal Services
Florida Transplant Survivors Coalition, Inc.
GALATA, Florida City
Greater Hartford Legal Aid
Health and Disability Advocates, Chicago
Human Services Coalition of Dade County, Florida, Inc.
League of Older Americans Area Agency on Aging
Legal Aid Society, New York
Legal Aid Society of Minneapolis
Legal Aid Society of Palm Beach County, Inc.
Legal Services for New York
Long Term Care Community Coalition
Medicare Advocacy Project, Greater Boston Legal Services
Medicare Rights Center
Mid-Minnesota Legal Assistance
Minnesota Disability Law Center
Neighborhood Legal Services of Los Angeles
National Health Law Program
New York Legal Assistance Group

Offices in Washington, D.C., Oakland and Los Angeles, CA
www.nslc.org

New York StateWide Senior Action Council
Northwest Health Law Advocates
Office of Health Care Ombudsman & Vermont Legal Aid, Inc.
Project Inform
St. Johns County Legal Aid
San Francisco AIDS Foundation
Service Employees International Union
So Others Might Eat
Virginia Association of Area Agencies on Aging
Western Center on Law and Poverty
Wisconsin Coalition for Advocacy

cc: Senator Max Baucus
Senator Christopher Dodd
Senator Denise Ducheny
Senator Richard Durbin
Senator Charles Grassley
Senator Herb Kohl
Senator Joe Lieberman
Senator Gordon Smith

Congressman Joe Barton
Congressman Sherrod Brown
Congressman John Dingell
Congresswoman Nancy Johnson
Congressman Charles Rangel
Congresswoman Jan Schakowsky
Congressman Pete Stark
Congressman Cliff Stearns
Congressman Bill Thomas

Abby Block, CMS, Julie Goon, CMS, Jeffrey Kelman, CMS