NSCLC
National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

January 7, 2013

Department of Health Care Services
Delivered via email to info@calduals.org
CC: Jane Ogle, Margaret Tatar

Medicare-Medicaid Coordination Office
Delivered via email to:
Melanie Bella, Edo Banach, Arrah Tabe-Bedward

Re: Comments on 30-Day Cal MediConnect Notice

The National Senior Citizens Law Center (NSCLC) appreciates the opportunity to comment on the 30-day notice to beneficiaries subject to passive enrollment into Cal MediConnect and mandatory enrollment into Medicaid Managed Care. The draft notices are inadequate and require additional revisions before distributing to dual eligible individuals in California. We hope our recommended revisions (attached) and the suggestions detailed here will be useful in the next round of edits.

NSCLC has been involved in the notice development process for over a year and a half when CMS provided stakeholders the opportunity to give feedback on early draft notices. The draft 30-day notice is an improvement from early versions, but the current text falls short of accomplishing its objectives to alert dual eligibles that the delivery of their Medicare and Medi-Cal benefits is changing and inform them of the impact this will have on their care and services.

We are extremely disappointed that even though the process of drafting these notices started a year and a half ago, DHCS and CMS are just now finalizing notices that need to be in the mail in less than 60 days and after 90 day notices have already been sent. Many of the promises that were made early in the process – like taking time to test the notices with beneficiaries – appear to have been abandoned even though the implementation has, thankfully, taken longer than DHCS and CMS originally planned.

Detailed below is a summary of our major concerns. Most are suggestions we have made repeatedly in response to previous notice drafts. We encourage you to include them in the final version:

Overall Design

Our attached suggested changes to the draft notice did not include an entire redesign. We believe, however, that a thorough redesign of the notices would be the preferred option. For a

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change as important as this in the way individuals receive their health care, we think that DHCS and CMS should expend the time and resources to develop a well-designed and thoroughly tested set of beneficiary notices, using the expertise of plain language specialists and thoroughly testing models. While we appreciate that advocates have been provided with drafts of notices—usually with extremely and inexplicably short turnaround times for comments—this process has been far too ad hoc and the resulting notices have been disappointing in their quality. We believe that much stronger and clearer notices could be developed if DHCS and CMS were to undertake a more thorough and deliberate process. DHCS and CMS ended up having the time for a careful process, but instead are now rushing a final product. We urge continued work on both the structure and content of the notices.

Readability and Comprehension

We seek assurances that this notice has been written at a sixth grade level pursuant to Senate Bill 1008 and the Memorandum of Understanding with the Centers for Medicare and Medicaid Services. Microsoft Word's readability tool scored the document as an 8.9 on the Flesh-Kincaid grade level system.

Similarly, we ask for confirmation that these notices have undergone beneficiary testing and that testing included beneficiaries with limited English proficiency, who are blind and visually impaired, who are deaf, and who have cognitive impairments.

Finally, we urge DHCS to insert a tagline on the notices or include an insert with the notice in the Medi-Cal threshold languages informing LEP beneficiaries how to obtain information in their primary language. While we appreciate that the notice directs beneficiaries to call Health Care Options if they need the notice in another language, it is important that the notices give this information to consumers in their primary languages.

Heading

We are very concerned that the heading "Important" is far too generic and does not call adequate attention to the changes set to occur in 30 days to the beneficiary's Medicare and Medicaid benefits. We recommend revising the heading to appropriately call attention to the change taking place. Current Medicare notices that dual eligibles receive about changes in coverage include these prominent and specific headings. For example, the annual Medicare Part D reassignment notice starts with a bold, large print sentence stating that, "Medicare is Moving You to a New Drug Plan for 2012." We have provided suggested language in our attached draft of the 30-day notice.

Introductory Paragraph

Cal MediConnect aims to promote person-centered planning and self-direction of care. These objectives are entirely undermined when, at the outset, notices act to discourage beneficiaries

from making an active enrollment choice. The following statement: "Unless you choose to stay with regular Medicare, you do not need to do anything" encourages inaction. It also is factually incorrect since individuals who wish to participate in Cal MediConnect but choose a different plan also need to take action. The final notice must encourage—not discourage--active choice. It must be direct and urge the beneficiary to use the resources available to make an informed decision. Engaging beneficiaries at the very start of the demonstration is key to its success.

First Section

This section (currently titled: Enrolling in a Cal MediConnect Plan will) is problematic in two ways: it is misleading and it does not clearly explain how the delivery of benefits will change under Cal-MediConnect.

The notice is misleading because it does not adequately convey the changes taking place under Cal MediConnect. Instead, the notice attempts to sell the anticipated benefits of Cal MediConnect. A beneficiary reading the proposed notice as written would have no understanding of how Cal MediConnect differs from the way the beneficiary currently receives benefits.

Similarly, the notice is problematic with its guarantee that Cal MediConnect "ensure(s) all of your doctors, specialists, and other providers will work together to get the care you need." This is not the case. DCHS and CMS cannot guarantee that every beneficiary's provider will be a part of the Cal MediConnect plan's network. There is also no guarantee that a beneficiary will be able to retain access to current services. The clearest example of this is that the Cal MediConnect plan may have a formulary that differs from the beneficiary's current Part D plan, requiring changes in the prescriptions the beneficiary takes.

The notice should not lead a dual eligible to believe in protections that simply do not exist. The notice must honestly inform the beneficiary that Cal MediConnect plans limit access to doctors and providers in the plans' networks and that the plans may decide to change, limit, or deny access to services the individual is receiving now.

Second Section

This section opens with a misleading sentence about Cal MediConnect making Medicare and Medi-Cal "work better together and work better for you." Beneficiaries need objective statements about differences between receiving services through Cal MediConnect and original Medicare, not aspirations stated as guarantees. In our comments on earlier drafts we noted that saying benefits will be "better" is misleading. Given the uncertainty of what plans and providers will offer, no one can guarantee this care will be better generally or, more specifically, better for any individual.

We reiterate our previous recommendation that the notice should lay out options. The tone of the entire letter should encourage the beneficiary to learn more, become engaged and make an active choice. The organization of the current Part D reassignment notice, http://www.cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11209.pdf, provides a better template than the current draft. It sets out three options giving the individual a clearer roadmap of choices. We encourage using a similar format in this notice that informs the beneficiary of his/her three other options: choosing a different plan, enrolling in PACE when that is an option for the individual (see our comments to the draft), or keeping traditional Medicare and choosing only a Medi-Cal managed care plan.

Final Section

This section should be a strong call to action and should lay out resources clearly. The tone should encourage investigation and informed decision-making.

The 30-day notice is the final opportunity to communicate with beneficiaries about significant changes to their Medicare and Medi-Cal. The information should be direct, accurate, and alert beneficiaries of their choices. We appreciate the opportunity to provide comments.

Sincerely,

Kevin Prindiville, Executive Director
Amber Cutler, Staff Attorney
National Senior Citizens Law Center