

DATE: March 15, 2023

OPERATIONS MEMORANDUM #23-03-01

SUBJECT: Changes to Medical Assistance (MA) Processing during the Continuous Coverage Period Based on the Court Case, Carr v. Becerra

TO: Executive Directors

FROM: Tanoa Fagan
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PURPOSE

To provide County Assistance Offices (CAOs) with updated policy and procedures for maintaining and restoring reduced MA benefits during the continuous coverage period due to the preliminary injunction filed in the court case, Carr v. Becerra. Information in this Operations Memorandum (OPS Memo) is **effective immediately**. OPS Memo 20-12-03 and PMA 20725-388 are obsolete with issuance of this OPS Memo.

BACKGROUND/DISCUSSION

On November 6, 2020, the Centers for Medicare and Medicaid Services (CMS) changed its original interpretation of Section 6008(b)(3) of the Families First Coronavirus Response Act via an Interim Final Rule to allow a reduction of MA benefits for Medicare recipients enrolled on or after March 18, 2020, into a Medicare Savings Program (Buy-In only) category because Buy-In only categories were considered Minimum Essential Coverage. Plaintiffs filed the lawsuit Carr v. Becerra, arguing that the revised interpretation of Section 6008(b)(3) in CMS's Interim Final Rule is a reduction in benefits that is detrimental to the health of MA recipients, despite statutory requirements for states to maintain continuous coverage during the Public Health Emergency (PHE).

On January 31, 2023, the United States District Court issued a preliminary injunction in the case of Carr v. Becerra. This preliminary injunction stops the reduction from full MA benefits to the Medicare Savings Program effective January 31, 2023, the date of this injunction, through March 31, 2023, the end of the continuous coverage period. MA benefits for affected individuals must be restored back to the most beneficial category in effect as of January 31, 2023.

PROCEDURES

Valid MA Reductions

Effective immediately CAOs **will not make changes to MA budgets that result in a reduction of MA coverage unless the individual requests a reduction in benefits**. For example, if an individual eligible for full MA coverage becomes eligible for Buy-In only or Family Planning Services only, then the CAO will not change the MA budget. Likewise, if a Qualified Medicare Beneficiary becomes eligible as a Specified Low-Income Medicare Beneficiary only, the CAO will not change the MA budget. The CAO must complete a category override to ensure the existing category remains open, the notice closing the existing category must be suppressed and a narrative must be entered in the case comments citing this OPS Memo.

NOTE: The Carr v. Becerra injunction does not affect beneficial MA benefit changes. CAOs will continue to make changes to MA budgets when a recipient transitions from one MA budget to another and MA coverage and benefits are maintained at the same level or increased.

When an individual enrolled in MG91 or MG90 turns 65 or becomes enrolled in Medicare, the CAO will request resource information and verification.

- If resource information and verification are not provided or if the individual becomes ineligible for MA based on the provided verification, the CAO will keep the individual open in MG91 or MG90.
- If the resource information and verification are provided and the individual continues to be eligible for MA with the same level of MA coverage, the CAO will enroll the individual in the category the individual is eligible for.
- If the individual becomes eligible for Buy-In only, the CAO will complete an override to open PH80 to enroll the individual in Healthy Horizons with Buy-In, so that the individual's MA coverage continues.

When a Medical Assistance for Workers with Disabilities (MAWD) recipient turns 65, the CAO will review eligibility for another MA budget with the same MA coverage. If the MAWD recipient is not eligible for another MA budget, then the CAO will complete a category override to Healthy Horizons. If the MAWD recipient was also eligible for Buy-In the CAO will authorize PH80. If the MAWD recipient was not eligible for Buy-In while receiving MAWD then a category override to PH00 will be completed.

Example One: John is in an MG91 category. He turns age 65 in February and he is eligible and enrolled in Medicare. The CAO verifies income and resources and runs eligibility. Since John would be eligible for a Buy-In only category the CAO will complete a category override to authorize him in PH80.

Example Two: Dorothy is in an MG91 category. She turns age 65 and she is eligible and enrolled in Medicare. She is not eligible for Buy-In because her income exceeds the Buy-In income limits. The CAO will maintain her eligibility in MG91. No override is needed as the system maintains eligibility.

Example Three: Barry is in a MAWD with Buy-In category PW80. He turns age 65 in February 2023. Barry has income over the Healthy Horizons Buy-In limit of \$1,215.00. Since Barry would be eligible for a Buy-In only category the CAO will complete a category override to PH80. This category will ensure Barry remains eligible for MA and Buy-in without charging a monthly premium.

Example Four: Stan is in a PH 80 category. He reports an income increase in February that exceeds the Healthy Horizons income limit. Although he would be eligible as a PG00, Stan must remain in the PH80 category.

Valid MA Closures

The preliminary injunction has not changed policy for allowable MA closures. Per previous guidance, CAOs will not close any MA, Long-Term Care (LTC) facility, or Home and Community-Based Services (HCBS) budget at renewal, Semi-Annual Reporting (SAR), case maintenance, or change in circumstance except for the reasons listed below:

- An individual is no longer a resident of Pennsylvania.
- An individual request that their benefits be closed (voluntary withdrawal).
- An individual has passed away.
- Presumptive Eligibility (PS17 and MG17) – the CAO will allow MA to close at the end of the presumptive eligibility period if the individual is not eligible for ongoing MA.
- Inpatient Inmates MA (categories with program status codes 38 and 39) – the Central Unit will continue to process MA for inpatient inmates for a period of hospitalization only.
- Inter-County Transfers (ICT) – the losing CAO will follow the existing process to close MA when completing an ICT. The gaining CAO will open MA from the day after MA closed.
- MA for lawfully present non-citizens (citizenship code 2 subject to the five-year bar, and citizenship code 3) who turn age 21 or whose 12-month postpartum period has ended – the CAO will allow MA to close if the individual is not eligible for another MA category. See MAEH 322.32 for more information on lawfully present non-citizens.

NOTE: CMS guidance requires that non-citizens who are eligible for MA because they have an emergency medical condition entered on the Alien/Refugee screen, also known as Emergency Medical Assistance, continue to receive MA benefits until the last day of the month in which the continuous coverage period ends. Refer to PMA 19870-322, PMA 20151-322, and PMA 20334-322 for more details on processing non-citizens during the continuous coverage period.

Individuals must have a renewal completed before their MA can be closed for agency error or fraud or abuse. The CAO must send a manual renewal packet and PA 253 requesting verification items and giving the individual 30 days to return the forms and verification. If renewal forms or verification are not received or if the individual is determined ineligible due to fraud, abuse, or agency error, MA should be closed. If renewal forms and verification are provided and the individual is determined eligible, MA benefits should be maintained.

When MA benefits are closed, an advance notice must be provided to include appeal and fair hearing rights.

Pennsylvania Recipient Identification System (PARIS) Match/Exchange 9

When an individual is identified through an Exchange 9 data match with PARIS as receiving a public benefit in another state, this information must be verified. The caseworker must:

- Review the PARIS match identifying the individual as being enrolled in a public benefit program in another state.
- Request for the individual to provide verification of their Pennsylvania (PA) residency.
 - If verification is provided or obtained and the individual is a PA resident, maintain MA benefits. If verification provides proof that the individual is no longer a PA resident, then close MA.
 - If verification is not provided by the individual and the caseworker makes a reasonable effort to obtain verification from available sources, but is unable to verify PA residency, then close MA.

NOTE: After closing MA, if the caseworker obtains verification of the individual's PA residency, MA benefits should be reinstated back to the date of closing.

Foster Care

For Foster Care and Adoption MA (categories with program status codes 30-37), the CAO will allow MA to close in the category with program status code 30-37 when the child is discharged or ages out. Children who are discharged and returned to the home of removal where they previously had MA will be reopened in that case in the appropriate MA category. For all other discharges and age outs, the CAO will open MA in an appropriate category based on age (MG27, MG00, MG91, etc.).

Supplemental Security Income (SSI) Recipients in Suspended Status

SSI recipients who become ineligible for SSI per the State Data Exchange interface must be reviewed for eligibility in other MA categories with the same MA coverage as the SSI budgets (A, J, M) as discussed in [MAEH 387.53](#). If the individual is not eligible for MA in a category that offers the same MA coverage, the individual should remain in Suspended SSI.

Processing LTC and HCBS Changes

LTC Facility Recipients Transitioning to the Community

LTC facility recipients who transition to the community must remain eligible for MA benefits during the continuous coverage period.

If the client is requesting HCBS and the CAO receives a PA 1768 HCBS Eligibility/Ineligibility/Change Form verifying the individual is functionally eligible but the individual has income or resources over the HCBS limit, the CAO must complete a category override to a HCBS category.

If the client is not requesting HCBS, the CAO will review for straight MA. If the client is determined not eligible for MA, the CAO will complete an override to PH00.

Example One: Bob is 67 years old, entitled to Medicare, has income over 300 percent of the Federal Benefit Rate (and over the Buy-In income limits) and is a TAN 00 recipient. The CAO receives a MA 103, LTC Admission and Discharge Transmittal Form verifying Bob was discharged from the facility. The CAO also receives a PA 1768 verifying Bob is functionally eligible for the Community HealthChoices (CHC) waiver. The CAO will complete a category override to the HCBS category PAW 00.

Example Two: Lynn is 60 years old, has income exceeding MA income limits and is a TJN 00 recipient. Lynn is **not** entitled to Medicare. The CAO receives a MA 103 form verifying Lynn was discharged from the facility. She is not requesting HCBS upon discharge. The CAO will complete a category override to PH 00.

Example Three: Jeff is 66 years old, has income exceeding MA income and Buy-In income limits and is a TAN 00 recipient. Jeff is entitled to Medicare. The CAO receives a MA 103 form verifying Jeff was discharged from the facility. He is not requesting HCBS upon discharge. The CAO will complete a category override to PH 00.

Example Four: Tina is 67 years old, entitled to Medicare and is a PAN 66 recipient. The CAO receives a MA 103 verifying she was discharged from the facility and a 1768 verifying she is functionally eligible for the CHC waiver. Although Tina's income exceeds the Healthy Horizons Buy-In income limit of \$1,215.00, the CAO will complete a category override to PH 80.

HCBS Recipients who are No Longer Functionally Eligible

HCBS recipients no longer eligible to receive waiver services due to functional ineligibility or who no longer need waiver services must have their waiver benefits closed once a PA 1768 verifying ineligibility is received in the CAO. Additionally, the CAO will also close waiver services when one of the following circumstances is notated on the PA 1768:

- “Unable to locate” is listed in the comments section
- Voluntary withdrawal of HCBS
- Refusal of medical (functional) assessment
- Refusal of HCBS

These individuals must be reviewed for straight MA and MA with Buy-In (if receiving Medicare). If not eligible for straight MA the CAO will complete a category override to authorize in a PH00 category.

Example One: The CAO receives a PA 1768, verifying John no longer meets functional eligibility requirements for HCBS. John is eligible and enrolled in Medicare. The CAO reviews and he is only financially eligible for the Buy-In only category of TJ 67. Due to the Carr v. Becerra injunction, the CAO will end-date the waiver code and complete a category override to PH 00.

Example Two: The CAO receives a PA 1768 terminating HCBS for Barb. “Unable to locate” or “unable to make contact” is listed in the comments section of the form. Barb is not receiving Medicare. The CAO reviews and determines that Barb has income exceeding the Healthy Horizons and Modified Adjusted Gross Income, income limits. The CAO will end-date the waiver, send an advance notice to close HCBS and complete a category override to authorize PH 00.

Example Three: The CAO receives a PA 1768 terminating HCBS because Leon voluntary withdrew. Leon is eligible and enrolled in Medicare. The CAO reviews and determines that Leon has income and resources within Healthy Horizons limits. The CAO will end-date the waiver code, send an advance notice to close HCBS and authorize PH80.

NOTE: Advance notice must be provided when closing HCBS unless the client provided the request to withdrawal from HCBS in writing. If the CAO receives a written request from the individual, then the CAO will close with a confirming notice.

Increase to the Cost of Care for LTC Facility Recipients

LTC facility recipients will continue to have their payment towards their cost of care increased during the continuous coverage period. Income increases must be processed as usual per existing policy.

Home Maintenance Deductions (HMDs) that Expire

HMDs for LTC facility recipients must be terminated once they expire. Ongoing HMD terminations should be processed timely according to existing policy.

Establishment of an Ineligibility Period for LTC/HCBS

LTC facility/HCBS recipients who transfer assets for less than fair market value or who have excess home equity may be penalized during the continuous coverage period. The CAO will apply the penalty period and send an advance notice for asset transfers made without fair market value or for excess home equity per policy found in [LTCH 440.851](#). Also, if the CAO did not previously check for gifting due to the previous guidance related to the pandemic, the CAO must do so now and apply a penalty for any asset transfers.

NOTE: The transfer exceptions in [LTCH 440.812](#) and the undue hardship provisions in [LTCH 440.89](#) apply.

Renewals and SAR Processing

CAOs will process MA renewals and SARs using the following procedures:

- Budgets due for renewal or SAR are **not** to be closed for failure to provide a renewal packet, SAR form, or verifications.
- If a renewal packet or SAR form is returned with verification or data source information is reasonably compatible for MA and the individual will remain eligible, the renewal or SAR should be processed.

- If a renewal or SAR is returned with verification (or data source information is reasonably compatible for MA) and will result in budget closure due to excess income, the renewal or SAR should not be processed for MA. The MA should remain open and the work renewal work item should remain overdue.

This applies to currently due as well as overdue renewal and SARs from previous months which have not yet been processed.

For combination renewals, the caseworker must ensure that MA benefits are maintained, unless the renewal results in a valid MA closure or reduction as listed above.

CAOs should process renewals and SARs following current timeliness standards whenever possible. However, if needed due to the Coronavirus Disease (COVID-19) emergency, the CAO should continue to use the flexibilities allowed in timeliness and verification standards during the continuous coverage period. If the delay was caused by the emergency, caseworkers should narrate that the COVID-19 emergency was the reason for any delay in processing.

The CAO should process any reported changes through maintenance mode (using normal processing times). The caseworker should ensure that MA benefits are maintained, unless the reported change results in a valid MA closure or reduction.

NOTE: More information pertaining to processing SARs and renewals during the unwinding of the continuous coverage period will be provided in the near future.

MA Related Hearings and Appeals

CAOs will follow the timelines for MA related appeals as outlined below:

- The CAO will accept MA appeals filed within 30 days from the date of the written notice of a CAO decision or action in accordance with Supplemental Handbook Chapter 870.12.
- The CAO will continue MA if the individual appeals after 15 days of the date an advance notice is sent **and** requests that their MA benefits be reinstated until the Bureau of Hearings and Appeals makes a hearing decision.
- If the CAO receives an appeal with an expedited fair hearing request, the CAO will continue MA benefits even if the appeal was received after 15 days of the date an advance notice is sent and follow the normal appeal process as outlined in the Supplemental Handbook Chapter 870.

Reminder: For MA, if an individual appeals within 15 days of the date an advance notice is sent, the CAO should follow current procedure and maintain MA benefits.

ADDITIONAL INFORMATION

Policy Clarification PMA 20725-388 is obsolete with the issuance of this OPS Memo. The following Policy Clarifications remain obsolete with the issuance of this OPS Memo:

- PMA 20163-388
- PMN 19993-468
- PMN 20051-440
- PMN 20071-468
- PMW 19917-316

NEXT STEPS

1. Share and review this information with appropriate staff members.
2. Direct questions regarding this OPS Memo to your Area Manager.