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**TO:** Medicare Advantage Dual Eligible Special Needs Plans and Programs of All-Inclusive Care for the Elderly Organizations

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**SUBJECT:** Guidance on Medicaid Unwinding for Impacted Enrollees

This memorandum describes messages Medicare Advantage (MA) dual eligible special needs plans (D-SNPs) and Programs of All-Inclusive Care for the Elderly (PACE) organizations can communicate to their enrollees as states return to normal Medicaid eligibility and enrollment activities during state Medicaid agencies' "unwinding" periods, including terminations of eligibility and transitions between coverage programs.

#### Background

In March 2020, section 6008 of the Families First Coronavirus Response Act (FFCRA) established a "continuous enrollment condition," under which states have maintained the enrollment of most Medicaid beneficiaries enrolled as of or after March 18, 2020, as a condition for receiving a temporary increase in the state's federal medical assistance percentage (FMAP).

Under amendments to section 6008 of the FFCRA made by section 5131 of subtitle D of title V of division FF of the Consolidated Appropriations Act, 2023 (P.L. 117-328) (CAA, 2023), the continuous enrollment condition ended on March 31, 2023. Starting on April 1, 2023, states may terminate Medicaid enrollment for individuals who have been determined through a renewal completed during a state's unwinding period to no longer meet Medicaid eligibility requirements. The process of initiating and completing a renewal for all individuals enrolled in Medicaid following the end of the continuous enrollment condition has commonly been referred to as "unwinding."

On January 5, 2023, CMS released a Center for Medicaid and CHIP Services Informational Bulletin (CIB), *Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023*.<sup>1</sup> As discussed in the CIB, states were able to begin their unwinding period as early as February 1, 2023, by initiating renewals that could result in eligibility terminations on or after April 1, 2023.

States began their unwinding period by initiating renewals no later than April 2023. For states that initiated renewals prior to April 1, 2023, terminations of Medicaid eligibility may not be effective earlier than April 1, 2023. Generally, states must initiate renewals for all individuals enrolled in Medicaid within 12 months of the beginning of the state's unwinding period and must complete renewals for all individuals within 14 months of the beginning of the state's unwinding period. On January 27, 2023, CMS issued a State Health Official Letter that provided additional guidance on the CAA, 2023's changes to the FFCRA continuous enrollment condition;<sup>2</sup> guidance and information will continue to be posted to [www.Medicaid.gov/unwinding](http://www.Medicaid.gov/unwinding).

As states process Medicaid renewals during their unwinding periods, this may be the first time some beneficiaries' eligibility will be redetermined since the COVID-19 Public Health Emergency (PHE) began.

#### What D-SNPs and PACE Organizations Can Do

As states continue to process Medicaid renewals during their unwinding periods, we strongly encourage D-SNPs and PACE organizations to communicate the following messages to their enrollees:

1. Update your contact information – Make sure the state Medicaid agency and the D-SNP or PACE organization has your current mailing address, phone number, email address, or other contact information.
2. Check your mail and email – The state will mail or email you a letter about your Medicaid coverage.
3. Complete your Medicaid renewal form (if you get one) – Fill out the form and return it to the state Medicaid program right away to help avoid termination of your Medicaid coverage or a gap in your Medicaid coverage.

In addition, we strongly encourage D-SNPs and PACE organizations to provide direct outreach and support to individuals in renewing their Medicaid coverage. This could include providing a community health worker or case manager to support individuals as needed, providing inbound call center support to help enrollees who may not know how to renew or check on their Medicaid coverage, and partnering with your state Medicaid agency in other ways to provide targeted support to enrollees undergoing the Medicaid renewal process.

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<sup>1</sup> CMS. (January 5, 2023). *Key Dates Related to the Medicaid Continuous Enrollment Condition Provisions in the Consolidated Appropriations Act, 2023* [CMCS Informational Bulletin]. Available at [https://www.medicaid.gov/sites/default/files/2023-01/cib010523\\_1.pdf](https://www.medicaid.gov/sites/default/files/2023-01/cib010523_1.pdf).

<sup>2</sup> CMS. (January 27, 2023). *Medicaid Continuous Enrollment Condition Changes, Conditions for Receiving the FFCRA Temporary FMAP Increase, Reporting Requirements, and Enforcement Provisions in the Consolidated Appropriations Act, 2023* [State Health Official Letter]. Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho23002.pdf>.

D-SNPs and PACE organizations may refer to the “Medicaid and CHIP Continuous Enrollment Unwinding: A Communications Toolkit” for more information.<sup>3</sup>

#### Loss of Special Needs Status and Deemed Continued Eligibility for D-SNP Enrollees

We remind D-SNPs that, per 42 CFR 422.52(d),<sup>4</sup> if a special needs plan, including a D-SNP, determines that an individual who no longer meets eligibility criteria can reasonably be expected to again meet all eligibility criteria within a 6-month period, the enrollee may be deemed to continue to be eligible for the MA special needs plan for a period of not less than 30 days but not to exceed six months. For example, a dually eligible individual whose Medicaid enrollment ends can be deemed to continue to be eligible for the D-SNP if that individual would likely regain eligibility for the D-SNP within six months. Additional guidance on this deemed eligibility provision is available in section 50.2.5 of Chapter 2 of the Medicare Managed Care Manual.<sup>5</sup>

The D-SNP may choose any length of time from one month to six months for deeming continued eligibility, as long as it applies the criteria consistently to all enrollees of the plan and fully informs enrollees of its policy. The period of deemed continued eligibility begins the first day of the month following the month in which information regarding the loss of eligibility for the D-SNP is available to the organization and communicated to the enrollee. If the D-SNP makes a change to its deemed continued eligibility policy mid-year, the D-SNP must notify its enrollees per the mid-year change notification process outlined at 42 CFR 422.111(d) and 422.2267(e)(9).

If the enrollee of a D-SNP does not re-qualify within the plan’s period of deemed continued eligibility, the D-SNP must involuntarily disenroll the individual, with proper notice, at the end of this period, as required by 42 CFR 422.74. Regardless of the date on which the enrollee loses special needs status, the organization should provide the individual with a minimum of 30 days advance notice of disenrollment.

For D-SNPs that have an existing policy and period of deemed continued eligibility, CMS encourages these D-SNPs to communicate with enrollees about reestablishing Medicaid eligibility during those periods.

D-SNPs should provide each enrollee with a written notice regarding the loss of special needs status within 10 calendar days of learning of the loss of special needs status. We encourage D-SNPs to follow up with enrollees and to issue interim notices prior to the expiration of the period of deemed continued eligibility. Please see section 50.2.5 of Chapter 2 for more information and Exhibits #32 and 33 for model notices for informing individuals of the loss of special needs status and disenrollment.<sup>6</sup>

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<sup>3</sup> CMS. (2023). Medicaid and CHIP Continuous Enrollment Unwinding: A Communications Toolkit”. Available at <https://www.medicaid.gov/resources-for-states/downloads/unwinding-comms-toolkit.pdf>.

<sup>4</sup> See also section 1859(b)(6) of the Social Security Act (the Act).

<sup>5</sup> CMS. (2020). Medicare Managed Care Manual. Chapter 2 - Medicare Advantage Enrollment and Disenrollment Guidance. Available at: <https://www.cms.gov/files/document/cy2021-ma-enrollment-and-disenrollment-guidance.pdf>

<sup>6</sup> Ibid.

While the individual remains enrolled in the D-SNP during the period of deemed continued eligibility, the D-SNP must continue to provide all MA plan-covered Medicare benefits and MA supplemental benefits offered by the plan. However, because the individual has lost Medicaid enrollment, the individual is not eligible for Medicaid benefits, such as payment by the state of Medicare premiums or cost-sharing. Therefore, D-SNPs are not responsible for coverage of Medicaid benefits under a contract with the state during a period of deemed eligibility and are not required by 42 CFR 422.504(g)(1)(iii) to ensure that their contracted providers refrain from collecting plan cost-sharing for Medicare benefits during this period. Cost-sharing amounts for Medicare basic and supplemental benefits do not change during this period and the D-SNP enrollee may be billed the cost-sharing included in its bid for the contract year. During the period of deemed continued eligibility, D-SNPs are responsible for knowing the benefits covered for the enrollee, the state requirements regarding deemed continued eligibility, and the enrollee notification requirements.<sup>7</sup>

If a D-SNP enrollee no longer qualifies for Medicaid, the enrollee is eligible for the Special Enrollment Period (SEP) for Individuals Who Lose Special Needs Status per 42 CFR 422.62(b)(11) and can enroll in another MA plan, if they choose, or Original Medicare. Per 42 CFR 423.38(c)(27), they have access to a Part D SEP to enroll in a Medicare prescription drug plan as well.

#### Deemed Continued Eligibility for PACE Plan Participants

Unlike a D-SNP, PACE enrollment is not restricted to individuals eligible for Medicaid (or Medicare) per 42 CFR 460.150(d). Thus, there is no deemed continuous Medicaid eligibility process for PACE participants. If the state determines that an individual is no longer eligible for Medicaid, the state would terminate the individual's Medicaid enrollment (and if the state wants to continue claiming the temporary FMAP increase under the FFCRA, the termination could be effective on or after April 1, 2023). In the event a PACE participant loses Medicaid enrollment they have the option to pay a monthly premium consistent with 42 CFR 460.186. If the participant fails to pay within the grace period, the PACE organization could proceed with involuntary disenrollment from PACE based on 42 CFR 460.164(b)(1).

However, PACE does have deemed continued eligibility for participants who are determined to no longer meet nursing facility level of care if the conditions of 42 CFR 460.160(b)(2) are met.

#### Beneficiary Contact and Medicare Communications and Marketing Rules

Communications from D-SNPs are subject to Subparts V of 42 CFR Part 422 and Part 423. Medicaid communications from the state or a separate Medicaid plan are not subject to the Medicare regulations.

MA organizations and their first tier and downstream entities, including their agents, brokers, and third party marketing organizations, must comply with 42 CFR 422.2262 and 422.2264 in conducting outreach activities to beneficiaries or their caregivers. Per 42 CFR 422.2264(b), MA organizations may contact current and, to a more limited extent, former enrollees, including those enrolled in other products offered by the parent organization to discuss plan business,

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<sup>7</sup> CMS. (Issued August 19, 2016) Medicare Managed Care Manual, Chapter 16b: Special Needs Plans. Available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c16b.pdf>

including (per 42 CFR 422.2264(b)(1)(i)(B)) calling existing enrollees, including Medicaid enrollees, to discuss other Medicare products or plan business. However, per 42 CFR 422.2264(a), MA organizations may not engage in unsolicited contact with beneficiaries or their caregivers. CMS prohibits MA organizations from making unsolicited calls (including robocalls, text messages, or voicemail messages) to former enrollees who have disenrolled or those in the process of disenrolling, except to conduct disenrollment surveys for quality improvement purposes. We do not consider D-SNP enrollees to be in the process of disenrolling at the point they lose Medicaid enrollment *during the deeming period*.

#### Questions

If you have any questions about the contents of this memorandum related to D-SNPs, please contact the Medicare-Medicaid Coordination Office at [MMCO\\_DSNPOperations@cms.hhs.gov](mailto:MMCO_DSNPOperations@cms.hhs.gov). If you have any questions about the contents of this memorandum related to PACE, please contact <https://pace.lmi.org>.