

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

January 18, 2019

By electronic delivery to [HCBSQualMeasures@mathematica-mpr.com](mailto:HCBSQualMeasures@mathematica-mpr.com)

Centers for Medicare and Medicaid Services  
Mathematica Policy Research Measure Development Team

## **Re: Support with Modifications HCBS-11 – New Medicaid LTSS Beneficiaries Using HCBS First**

Justice in Aging appreciates the opportunity to provide comments on the above-referenced proposed measure.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

We strongly support increased focus on measuring whether Medicaid beneficiaries, including those dually eligible for Medicare, have a meaningful choice to receive home and community-based services and whether their long-term services and supports (LTSS) needs are being met in the most appropriate and least restrictive setting possible. We agree that measuring the proportion of first-time Medicaid LTSS beneficiaries who received home and community based services (HCBS) only and not long-term institutional services in the first month can provide important information and value as states work towards increasing LTSS delivered through home and community-based settings.

Nonetheless, this particular proposed measure is not useful in assessing the quality of care and is premised on individuals being able to choose HCBS first. In reality, because of certain eligibility criteria or caps on enrollment in HCBS waiver services, some individuals do not have this choice. Most of the factors are in the state's control. Therefore, we would support CMS and the measure development team to focus on developing more consumer-reported outcome measures in this area that ask individuals about their experience with being able to choose and receive HCBS and their experience with those services once they receive them.

Our comments in response to the project team's measure specific questions follow.

### **Identifying long-term institutional stays and distinguishing Medicare-covered stays for dual eligible beneficiaries**

We think that measuring long-term stays will distinguish between Medicare and Medicaid covered stays. For dual eligible beneficiaries, we recommend defining a long-term stay as over 100 days, which is a Medicare covered stay limit. Moreover, although a nursing facility resident may transition from Medicare to Medicaid coverage, it is not the case that Medicare and Medicaid are paying for the nursing

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facility services at the same time and so distinguishing between the payers should be possible, especially if only looking at long-term stays.

However, we note potential issues with defining long-term institutional care use for dual-eligible beneficiaries as “any nursing facility admission fully covered by Medicaid.” First, this definition would capture even a short Medicaid-covered stay which may or may not follow a Medicare-covered stay. The rules around Medicare covered stays are complex and require a 3-day inpatient hospital stay. Some dual eligible beneficiaries may be discharged to a nursing facility from an acute care setting or transferred from an assisted living facility (for example) but be ineligible for a Medicare covered stay. Second, an “admission” may not be recorded when the payer changes for individuals who stay in a facility after the 100-day Medicare limit because the resident is already admitted. Third, oftentimes Medicaid beneficiaries contribute to the cost of their nursing facility care because they are required to spend-down or pay a share of costs. Therefore, we recommend defining long-term institutional care use for dual-eligible beneficiaries in terms of the *stay* being covered by Medicaid and consider adding the minimum length of time.

### **Measure Stratification**

We support stratifying measure performance rates by age, dual eligible status, and Medicaid delivery system. It is important to identify any disparities among these populations.

Thank you for considering our comments. If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at [nkean@justiceinaging.org](mailto:nkean@justiceinaging.org).

Sincerely,



Jennifer Goldberg  
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