

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

June 1, 2020

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1744-IFC,
7500 Security Boulevard
Baltimore, MD 21244-1850.

Filed electronically at regulations.gov

Re: CMS-1744-IFC: Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency

Justice in Aging appreciates the opportunity to comment on the above-referenced regulations.

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 been marginalized and excluded from justice such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

Our comments are brief.

Overall concern -- Extension of temporary flexibilities: We appreciate the work of CMS to ensure that beneficiaries have access to needed services during the Public Health Emergency (PHE). We ask that CMS carefully monitor implementation of the flexibilities in this rulemaking with an eye to determining whether some of these flexibilities that directly improve beneficiary access could be retained on a permanent basis.¹ Learning from this experience could inform decisions to permanently simplify processes and eliminate barriers for individuals seeking needed care.

For the shorter term, we have particular concerns for Medicare and Medicaid beneficiaries who are older adults and people with disabilities and chronic conditions. We do not know when the PHE will end or the specific criteria that will be used to make that determination. But when the PHE order is lifted and health care delivery for most Americans transitions to more usual patterns, these vulnerable populations will still face elevated risk and continue to need many of the flexibilities provided in this interim rule. We ask that CMS look specifically at those provisions of this rule that protect beneficiary access and determine how they can be extended at least until an effective vaccine is widely available.

II.F -- Clarification of Homebound Status Under the Medicare Home Health Benefit: We appreciate the clarification of the homebound status requirement. We note that the criteria set out by CMS with respect to COVID-19 would appear to apply whether or not a PHE order is in place. We ask that CMS

¹ We are not suggesting that all flexibilities in this rulemaking or in other rulemakings should be retained. We especially urge that CMS not extend flexibilities that could lead to less oversight or poorer quality of care for beneficiaries.

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provide further clarification to ensure that physicians understand that they can make these determinations with respect to vulnerable individuals even if a PHE order is lifted.

II.U.1 Clinical Indications for Certain Respiratory, Home Anticoagulation Management and Infusion Pump Policies: We appreciate the decision of CMS to provide flexibility in coverage for home oxygen and other respiratory therapies. Even before the outbreak of COVID-19, advocates have reported that many beneficiaries with disabilities and chronic conditions have faced unnecessary hospital admissions and their conditions have been repeatedly aggravated because the NCD and LCD requirements are overly restrictive, depriving them of continuous access to oxygen therapy that could stabilize their condition. We ask that CMS revisit the current NCD and LCD, both reviewing the impact on the health of those with chronic pulmonary issues and incorporating learnings from the current flexibilities.

Thank you for the opportunity to comment on this rulemaking. If any questions arise concerning this submission, please contact Georgia Burke, Directing Attorney, at gburke@justiceinaging.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Goldberg".

Jennifer Goldberg
Deputy Director