

Legal Basics: Dual Eligibles

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses 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.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

1. Dual eligibles are a high need, high cost population.
2. Dual eligibles enjoy certain benefits as a result of their dual status, but the delivery of their healthcare also presents challenges.
3. Dual eligibles are at risk of being improperly billed for covered services.
4. As a result of efforts to better coordinate care for this population, dual eligibles enjoy a number of different enrollment options for their Medicare and Medicaid benefits.

Agenda

- Demographics of Dual Eligibles
- Overview of Medicare and Medicaid
- Common Barriers to Care
 - Access to Medicare Providers
 - Coordination of Benefits
 - Improper Billing
- Different Enrollment Options

Demographics

- Over 12 million dual eligibles in the country
- More likely women and seniors of color compared to Medicare-only beneficiaries
- Generally tend to be in poorer health, resulting in higher costs

Medicare and Medicaid Overview

Medicare Overview

- Federal health insurance program for individuals 65+ or individuals with disabilities
- Four main parts
 - Part A – hospital coverage
 - Part B – outpatient/physician services
 - Part C – managed care plans
 - Part D – prescription drug coverage

Medicaid Overview

- State-administered health insurance program for low-income individuals.
- Tends to offer services not covered under Original Medicare, including those older adults disproportionately rely on, including:
 - Transportation
 - Oral health benefits
 - Auditory services
 - Behavioral health
- States have significant discretion to operate program with federal requirements.

Special Protections for Duals

- Automatic enrollment into the Low-Income Subsidy Program (LIS) for Part D
- Medicare Savings Programs
- Special enrollment period for Medicare
- State buy-in for Medicare premiums

Common Barriers to Accessing Care for Dual Eligibles

Access to Medicare Providers

- Reports of Medicare providers refusing to see dual eligibles because of their Medicaid status.
 - Medicare generally pays 80 percent for a covered service, leaving the remaining 20 percent for Medicaid, but this cost-sharing rarely gets paid.
 - Provider's refusal, if not otherwise discriminatory, may be proper, but check state laws. Medicare Advantage forbids such practices.

Coordination of Benefits

- **Practice Tip:** Check to see if Medicare covers any needed-service. Medicaid is the payer of last resort.
 - Problem may arise if both Medicare and Medicaid offer some coverage, but Medicaid's is superior in scope.
- DME and dental are good examples where vigilant advocacy is needed. Check to ensure referrals and authorizations are completed, timely, and proper.

CASE EXAMPLE: Pamela needs therapy

Pamela is a mother who recently suffered a tragic loss. She is feeling depressed and might benefit from therapy. Pamela is a dual eligible with Original Medicare and a Medicaid.

- Medicare offers therapy and other basic behavioral health coverage under Part B, and her Medicaid plan offers that coverage and specialty mental health services.
- Her caregiver has helped her by calling both 1-800-Medicare and her Medicaid plan, both of whom said they will cover her office visit for therapy. She is confused and has come to you for help.

Discussion #1

- For basic therapy, Pamela should seek a Medicare therapist.
- Provider does not need to accept Medicaid or Pamela's specific Medicaid plan.
- Medicare is billed first, and the plan pays the remainder, if any amount is owed.

Improper Billing

- Dual eligibles in the Qualified Medicare Beneficiary (QMB) program are protected from cost-sharing for all covered services.
- Sometimes Medicare providers try to recoup the Medicaid cost-sharing.
- **Practice Tip:** Make sure your clients are enrolled in QMB if they are eligible.

CASE EXAMPLE: Pamela and billing

- Pamela has an upcoming appointment with a therapist.
- When she arrives, the receptionist informs her that the provider does not work with her Medicaid plan. The receptionist says Pamela is individually responsible for any cost-sharing.
- Now Pamela is worried and doesn't know if she wants to continue therapy.

Discussion #2

- The therapist does not need to be contracted with Medicaid plan to treat Pamela or receive cost-sharing.
- If Pamela is QMB, any attempt to collect would violate billing prohibition. May further violate a state's consumer law statutes.

Different Enrollment Options for Dual Eligibles

Medicare-Medicaid Plans

- About dozen states offer Medicare-Medicaid Plans (MMP) through a financial re-alignment initiative.
- MMPs are responsible for delivery of care across Medicare and Medicaid benefits. Also includes care coordination benefit.
- Experience is different in each state. Advocates should check if a MMP is an appropriate option for their dual eligible clients.

Dual Special Needs Plans (D-SNPs)

- Limited enrollment to dual eligibles only. Does not include a dual eligible's Medicaid benefits.
- CMS recently finalized rules implementing regulations for D-SNPs, including:
 - Responsibility to coordinate Medicaid benefits.
 - Requirements to integrate Medicare and Medicaid appeals.

D-SNP lookalikes

- Sometimes called “mirror” plans.
- Operate as ordinary MA plans but marketed almost exclusively to dual eligibles.
- Not subject to D-SNP requirements.
- Dual eligibles who enroll in a lookalike may find that plans are not working to coordinate their Medicare and Medicaid benefits.

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