

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

January 17, 2020

U.S. Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD. 21244-1850

Submitted via email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov)

**Re: Agency Information Collection Activities: Proposed Collection; Comment Request, CMS-R-131, OMB control number 0938-0566 (Advance Beneficiary Notice of Noncoverage (ABN))**

Justice in Aging appreciates the opportunity to resubmit our comments in response to the above-referenced request for comments on changes to the forms accompanying the Advance Beneficiary Notice of Noncoverage (ABN).

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 healthcare, 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, LGBTQ individuals, and people with limited English proficiency.

Our comments focus primarily on the additional guidance included in the instructions for the ABN given to providers pertaining to individuals dually eligible with Medicare and Medicaid (dual eligibles) and those enrolled in the Qualified Medicare Beneficiary program (QMB).

**Additional Guidance for Dual Eligibles and QMBs**

We welcome the additional special guidance in the form instructions for dual eligibles and commend CMS for including guidance specific to dual eligibles in this Paperwork Reduction Act submission. We frequently hear from advocates that ABNs can be confusing for dual eligibles, particularly given the federal rules prohibiting the billing of dual eligibles for Medicare Part A and B covered services.<sup>1</sup> This additional language helps to clarify for providers who work with dual eligibles that they cannot collect for covered services and explicitly delineates the limited

---

<sup>1</sup> 42 U.S.C. sec. 1396a(n)(3)(B).

**WASHINGTON**

1444 Eye Street, NW, Suite 1100  
Washington, DC 20005  
202-289-6976

**LOS ANGELES**

3660 Wilshire Boulevard, Suite 718  
Los Angeles, CA 90010  
213-639-0930

**OAKLAND**

1330 Broadway, Suite 525  
Oakland, CA 94612  
510-663-1055

circumstances under which such payment is appropriate. We also appreciate the inclusion of recognizing potential protections in state law as well. Despite increased attempts at outreach and education from CMS and advocacy organizations, we find that some Medicare providers remain confused or unaware of these billing protections, so this additional language serves as yet another important reminder to providers about the QMB billing rules.

We also appreciate the revised burden estimate. Accurate and properly completed ABNs protect both providers and beneficiaries. Including Medicare Part B providers in the burden analysis more accurately reflects the large swath of providers and beneficiaries who benefit from improved clarity in the forms.

#### Ensuring ABNs Are Used Appropriately

CMS has a responsibility to make clear under what situations ABNs are to be issued and to prevent providers from abusing the form. Although the supporting statement provides some language indicating the limited circumstances under which an ABN is issued, we were surprised to find that the form instructions themselves do not remind providers that under most circumstances, ABNs are not to be issued on a routine basis as explained in the Medicare Learning Network (MLN) on [Medicare Advance Written Notices of Noncoverage](#), ICN 006266 (October 2018). We believe this MLN contains helpful reminders about both the frequency of and prohibitions on ABN issuance that are important to include in the form instructions for providers.

#### Ensuring Beneficiaries Understand the ABN

ABNs are only useful when beneficiaries truly understand their choices and the potential consequences of accepting a service that may be denied under Medicare. Accordingly, we ask CMS to ensure that ABNs, as standard documents that affect beneficiary payment responsibilities, translate the form to the 17 languages in which the Social Security Administration routinely makes materials available – English and Spanish are insufficient – and include guidance to providers that reminds them of their obligation to ensure access to interpreter services when appropriate. We frequently encounter situations where ABNs are invalidated because an English ABN was given to an older adult with limited English proficiency without any interpretation.

Similarly, under the section “Completing the Notice,” the instructions direct providers to use 12-point font, but in our experience, older adults find 14 and 16-point font more legible, so we encourage CMS to direct providers to use a font size that older adults will not strain to comprehend.

Thank you for considering our comments. If any questions arise concerning this submission, please contact Denny Chan at [dchan@justiceinaging.org](mailto:dchan@justiceinaging.org).

Sincerely,

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

Jennifer Goldberg  
Deputy Director