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January 17, 2020

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

VIA ELECTRONIC SUBMISSION

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

The Medicare Rights Center (Medicare Rights) appreciates the opportunity to respond to the **Agency Information Collection Activities: Proposed Collection; Comment Request, CMSR-131, OMB control number 0938-0566 (Advance Beneficiary Notice of Noncoverage (ABN))**. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Medicare Rights provides services and resources to three million people with Medicare, family caregivers, and professionals each year.

We welcome the additional special guidance the Centers for Medicare & Medicaid Services (CMS) included in the instructions for the ABN pertaining to individuals dually eligible for Medicare and Medicaid (dual eligibles) and those enrolled in the Qualified Medicare Beneficiary (QMB) program.

Also known as a waiver of liability, an ABN is the notice providers give to their Medicare-eligible patients in advance of a service if the provider has reason to believe Medicare will not pay for that care. The ABN is intended to allow beneficiaries to decide whether to obtain the service and accept financial responsibility for it should Medicare deny payment.

Often, ABNs can be confusing for Medicare beneficiaries. Because of their low incomes, dual eligibles, including QMBs, are especially at risk of significant financial hardship if they or their providers misunderstand their financial obligations and protections. For example, Medicare Rights has heard from QMB enrollees who were given ABNs and asked to pay for their items or services in advance. This is in direct conflict with current program rules, which prohibit billing dual eligibles for services covered by Medicare Parts A and B except under very limited

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circumstances.¹ In some cases, even after we explained this rule to the individual's provider, they were still refused items or services without a signed ABN in place accepting financial responsibility.

We appreciate the new instruction language that clarifies ABNs given to dual eligibles must explain the limited circumstances under which such payment is appropriate.

Language and Readability

Further, we encourage CMS to ensure that beneficiaries have meaningful access to the information contained in ABNs by providing the form in the 17 languages in which the Social Security Administration routinely makes materials available. In addition, CMS should remind providers of their obligation to ensure access to interpreter services when appropriate.

Thank you again for making changes to the ABN form that will better guide providers who treat dually eligible individuals. We appreciate this opportunity to comment and support the agency's pursuit of additional improvements to ensure ABNs best communicate the rights and responsibilities of Medicare beneficiaries. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 or Julie Carter, Senior Federal Policy Associate, at JCarter@medicarerights.org or 202-637-0962.

Sincerely,



Fred Riccardi
President
Medicare Rights Center

¹ 42 U.S.C. sec. 1396a(n)(3)(B).