



October 10, 2023

Via electronic mail

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Individual and Small Employer Health Coverage Programs
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Justin Zimmerman
Acting Commissioner
New Jersey Department of Banking and Insurance
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Re: Invalid Presumption of Medicare Coverage

Dear Ms. DeRosa and Commissioner Zimmerman:

We are writing to you on behalf of New Jersey Citizen Action, BlueWaveNJ, New Jersey Policy Perspective, CWA Local 1081, Lutherans Engaging in Advocacy Ministry, Make The Road-NJ, Latino Action Network Foundation, SPAN Statewide Parent Advocacy Network, and New Jersey Appleseed Public Interest Law Center; we are all members of the New Jersey For Health Care Coalition, a broad-based alliance of health care and advocacy organizations working to bring quality affordable health care to all New Jersey residents. It came to our attention recently that the current [standard contract](#) in New Jersey's Individual Health Benefits Plan states that the insurer will presume that enrollees who are over age 65 are eligible for Medicare — unless the enrollee provides proof positive otherwise.

We were pleased to read in an [NJ.com article](#) that the Department of Banking and Insurance (DOBI) has acknowledged that this provision in the 2023 standard contract violates

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[CMS guidance](#) issued on May 24, 2023, which states categorically that an ACA-compliant individual market insurer “may not limit or exclude coverage based on the theoretical possibility of an individual’s enrollment in other coverage... regardless of whether an individual is (or is presumed) eligible for Medicare.” DOBI has stated that the standard contract provision authorizing the presumption of Medicare eligibility for enrollees over age 65 will be removed in the 2024 contract. DOBI further told NJ.com that on September 27, 2023, the Department sent a directive to IHC insurers “to review the benefits of individuals who are 65 and older and enrolled in plans through GetCoveredNJ “to ensure that the policyholders are receiving the appropriate coverage, and that all coverage is consistent with the applicable Federal Guidance,” according to Dawn Thomas.

While we applaud these actions, we are concerned about the fallout from IHC insurers acting as a secondary payer for IHC enrollees, who were entitled to the comprehensive coverage that the Affordable Care Act purports to provide enrollees in Qualified Health Plans. In the Open Enrollment Period for 2023, 8,929 enrollees in health plans obtained through GetCoveredNJ were over age 65, according to CMS data. An unknown additional number have enrolled in IHC plans off-exchange. IHC insurers have been declining to act as primary payer for an unknown number of them, exposing them to medical bills far in excess of the plans’ statutory annual out-of-pocket maximums. Moreover, while the presumption of Medicare eligibility in over-65 enrollees and the demand that they refute the presumption with proof positive was only ratified in the 2023 contract, we understand that the IHC program may have been sanctioning this practice since at least 2016. For years, an unknown number of elderly IHC enrollees may have been burdened with potentially significant amount of medical debt.

Many if not most individual market enrollees over age 65 are legally present immigrants who lack the 40 quarters (10 years) of tax-paying work required to obtain free Part A Medicare. In New Jersey, nearly 9,000 over-65 enrollees in 2023 and approximately 45,000 cumulatively since 2016 have been found eligible for marketplace coverage by GetCoveredNJ or (prior to 2020) HealthCare.gov, and their full coverage should have continued until they disenrolled or their policies expired. Instead, the onus has been on all of these individual market enrollees over age 65 to prove that they are ineligible for Medicare. The proof required by at least one IHC insurer with large market share entails applying for Medicare (often with full awareness of one’s ineligibility) and receiving a rejection letter, which can take up to 60 days, according to the Social Security Administration (“SSA”) phone help line. In the absence of such proof, insurers in an unknown number of cases have declined to pay the bulk of every medical bill incurred.

Requiring this process has imposed an unconscionable logistical burden on elderly ACA marketplace enrollees, many of whom are of limited English proficiency and limited technical proficiency. Many have doubtlessly failed to provide the unlawfully required proof and have been exposed to all but a small fraction of the amounts billed by providers for their care.

We are formally requesting that DOBI revoke its previous position and enforce the policy stated in its September 27 directive and require all IHC insurers to immediately stop acting as a secondary payer to Medicare for all current enrollees and cover all approved bills incurred, **since the start of this contract period**, as the primary insurer. It is further necessary that DOBI investigate previous denials and ensure that all outstanding medical debt incurred by IHC

enrollees over age 65, as a result of their insurer's failure to act as primary insurer, be exonerated and paid by the insurer.

Thank you for your attention to this issue. We look forward to swift action from DOBI to stop a practice that substantially nullifies coverage for potentially thousands of IHC enrollees.

Respectfully submitted,

/s/Renée Steinhagen
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