

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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Greetings:

We, the undersigned organizations, write to express our deep concerns and opposition to proposed changes that would permit brokers to enroll dual eligibles into the Cal MediConnect (CMC) program. We share the Department's goal of helping more people have a positive experience in CMC, but this change constitutes the rollback of a critical consumer protection that has existed since the inception of the program. The proposal to introduce brokers is inconsistent with consumer experience on the ground and exposes consumers to potentially harmful broker misconduct accompanied by disruptions in care. Further, the proposal suffers from a woefully inadequate stakeholder engagement process.

Instead of proceeding with its planned approach, we strongly encourage the Department (DHCS) to work with stakeholders to develop policies that are consumer-focused and strengthen the Cal MediConnect program.

The broker proposal subjects consumers to overzealous broker misconduct, resulting in increased confusion and disruption.

Our experience in working with dual eligible consumers suggests that the current Medicare Advantage (MA) broker system is broken. Recognizing the problems with brokers and in working with stakeholders and the advocate community, California opted to exclude brokers from marketing CMC plans, intentionally shielding consumers from the confusion and

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disruption that broker activity introduces, given a broker's financial incentives to effectuate an enrollment.

Even when brokers follow marketing guidelines, consumers often feel unduly pressured to enroll when approached by brokers. Broker misconduct, which unfortunately is not rare, exacerbates the problem.¹ Many brokers convince prospective members to enroll without adequately explaining to them the consequences of accessing care in a managed care network or without regard to the impact on their ability to continue seeing their treating providers; some consumers report never having consented to the enrollment. The common result is that consumers are left confused and frustrated. Some experience disruptions in care when they attempt to obtain services from their former providers, only to be denied services because of their new plan enrollment. Upon learning of the true consequences of their enrollment, many of these new members, driven by the desire to maintain relationships with longstanding providers, disenroll and return to their previous delivery system.

Some brokers continually violate existing marketing guidelines. Consumers have been approached for enrollment at their homes, where they shop, and even in their doctor's offices. For example, advocates are aware of over 40 cases of aggressive marketing misconduct from MA brokers in California as recent as earlier this year. Enrollments driven by broker misconduct are particularly problematic in rural communities, where network adequacy may not be robust, and for limited English proficient (LEP) consumers, who already have low health literacy and less access to accurate information. DHCS's proposal to introduce brokers to CMC reverses a longstanding policy but fails to create additional safeguards to protect consumers.

The broker proposal fails to strengthen the Cal MediConnect program.

The CMC program was created with the intention of designing a better delivery system for California's dual eligible population. All proposed policy changes should advance this goal. Implied in the state's argument is that the program will enjoy greater enrollment if brokers are allowed to market CMC plans. The notion that brokers will increase enrollment in the program does not account for the realities of broker activity. As we stated before, consumers who enroll as a result of broker misconduct do not stay enrolled in their plans and return to their previous delivery system to access services from previous providers. Also, since nothing in the state's proposal prohibits one broker from enrolling a member into CMC just to have another broker enroll the same consumer in another plan, introducing more brokers will only increase the shuffling of consumers among different Medicare products. In opting to introduce brokers to CMC, DHCS disregards the confusion and disruption in care that consumers experience from

¹ The types of misconduct are documented in a HHS Office of Inspector General report on Medicare Advantage plan marketing activities. We find many of the types of misconduct have continued since the report's release in 2010. Department of Health and Human Services, Office of Inspector General, "[Beneficiaries Remain Vulnerable to Sales Agents' Marketing of Medicare Advantage Plans](#)," Mar. 2010.

broker activity in favor of short-term enrollment gains that offer no guarantee of long-term program retention.

DHCS's decision to limit brokers to specific CMC plans through a pilot program design does nothing to mitigate against the disruption and confusion consumers will experience. Instead, this policy creates a slippery slope that could expand the use of brokers for all CMC plans that will expose California's dual eligibles to greater confusion, disruption, and shuffling, and does nothing to improve or strengthen Cal MediConnect as an integrated delivery system.

The broker proposal does not recognize the avenues for outreach to prospective enrollees that are already available to Cal MediConnect plans.

In reversing a longstanding policy, DHCS has indicated that CMC plans are at a current disadvantage because MA plans are authorized to use brokers in enrolling new members, while CMC plans cannot. DHCS's reasoning ignores policies that benefit CMC plans, many of which do not apply to their Medicare Advantage counterparts. For example, CMC plans were the only Medicare product that benefitted from the introduction of thousands of new members every month for over a year through passive enrollment, a disruptive process that infringed on consumer choice. Second, while MA plans are restricted from initiating "cold calls" to prospective members, in an exception in the Medicare Marketing Guidance, CMC plans are permitted to initiate outreach to prospective members so long as they are enrolled in the parent company's Medi-Cal plan.² Furthermore, unlike all other Medi-Cal enrollments, these transactions can be initiated by the CMC plan through streamlined enrollment.

Streamlined enrollment was introduced in CMC to increase enrollment at the expense of bypassing the state's independent enrollment broker, a critical consumer protection for all Medi-Cal consumers. Through streamlined enrollment, plans can directly submit enrollment transactions to Health Care Options (HCO) without the consumer contacting HCO to enroll. Streamlined enrollment is only available if the CMC plan is operated by the same company as the dual eligible's Medi-Cal plan; in rolling this process out, DHCS noted this restriction was an important consumer protection.³ As advocates predicted, streamlined enrollment did not yield the enrollment gains DHCS hoped for.

DHCS now claims that the already eroded consumer protections built into the streamlined enrollment process are a way to counter potential broker misconduct. While HCO is obligated to conduct up to five phone calls to confirm the consumer's choice, these protections are not ironclad. For example, the policy does not require that HCO make *actual* contact with the

² 2018 [Medicare Marketing Guidelines](#), 80.4.1.

³ "[I]n order to ensure that beneficiaries are protected, health plans will be limited to using streamlined enrollment only for those beneficiaries already in their Medi-Cal health plan." Department of Health Care Services, "[Streamlining the Cal MediConnect Voluntary Enrollment Experience](#)," Apr. 2016, p. 3.

consumer for the enrollment to be processed. Furthermore, the enrollment verification calls do not prevent deceptive marketing practices on the front end. DHCS's proposal to no longer limit streamlined enrollment to those prospective enrollees in the parent company's Medi-Cal plan exposes even more consumers to this inadequate process.

DHCS failed to consult stakeholders in releasing its broker proposal and should focus its resources on improving the future of the Coordinated Care Initiative.

Since the introduction of brokers marks a rollback of an essential consumer protection, a change of this magnitude demands a robust stakeholder process. In stark contrast to the Department's own actions in 2016 when it proposed new Cal MediConnect enrollment policies via a public consultation process with a public webinar, a number of written documents, and over two weeks for comments, this time the Department announced these changes at a closed meeting of the California Collaborative, with the changes summarized on a single PowerPoint slide and comments due in under one week's time. Nothing has been released for public comment. Anyone searching the CalDuals.org website would find no reference to any of these proposed changes. DHCS's timeline to implement these changes for plan year 2019 also leaves health plans little time to adequately train staff, brokers, and agents.

The proposal comes after repeated reassurances from regulators that brokers would not be introduced into the program. We are at a critical juncture when collaborative efforts must center on the future of the demonstration and on making Cal MediConnect an ideal delivery system for California's dual eligibles. Considerable work remains on reducing institutionalization and promoting access to long-term services and supports. We urge the Department to consider person-centered enrollment proposals that would help to strengthen the Cal MediConnect program. For example, money spent on compensating brokers could instead help fund a more robust benefit package for dual eligible consumers that sets Cal MediConnect plans apart from non-integrated Medicare products.

We thank you for the opportunity to comment and look forward to working together to improve the Cal MediConnect program.

Sincerely,

Justice in Aging
AARP California
Advocates for African American Elders
Aging Services Collaborative of Santa Clara County
Alzheimer's Greater Los Angeles
Angelus Plaza Residential Service Coordinators
Asian Americans Advancing Justice Los Angeles

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Association of CA Caregiver Resource Centers
Bay Area Community Services
California Association of Adult Day Services (CAADS)
California Advocates for Nursing Home Reform
California Association of Public Authorities for IHSS (CAPA)
California Foundation for Independent Living Centers
California Health Advocates
California Hospital Association
California IHSS Consumer Alliance
California Medical Association
California Pan-Ethnic Health Network
CalPACE
Center for Health Care Rights
Community Resources for Independent Living (CRIL)
Community SeniorServ
Coordinated Care Initiative Ombudsman
Disability Rights California
Disability Rights Education and Defense Fund (DREDF)
Disability Services & Legal Center
Health Consumer Alliance
HICAP-Inland Empire
Homebridge
Inland Counties Legal Services
Jewish Family Service of Los Angeles
Legal Aid Foundation of Los Angeles
Legal Aid Society of San Diego
Legal Aid Society of San Mateo County
LIFE ElderCare
LifeLong Medical Care
Los Angeles Aging Advocacy Coalition
Marin Center for Independent Living
Meals on Wheels California
Multipurpose Senior Services Program Site Association
National Health Law Program
Partners in Care Foundation
Personal Assistance Services Council
Senior Advocates of the Desert
Senior Coalition of Stanislaus County
Senior Medicare Patrol, a Project under the California Health Advocates
Silicon Valley Independent Living Center
Sourcewise HICAP
St. Barnabas Senior Services
Steel Plaza Residential Services Coordinators

Street Level Health Project
Talmadge House
UDW/AFSCME Local 3930
Western Center on Law and Poverty
WISE & Healthy Aging