

DATE: March 15, 2023

Medi-Cal Eligibility Division Information Letter No.: I 23-18

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY ADMINISTRATIVE OFFICERS  
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS

SUBJECT: Updated Guidance on the January 31 Injunction for Individuals Enrolled in Medicare Savings Programs during the COVID-19 Public Health Emergency Period

The purpose of this Medi-Cal Eligibility Division Information Letter (MEDIL) is to provide counties with updated guidance from the Centers for Medicare and Medicaid Services (CMS) regarding reinstatement of eligibility for certain individuals enrolled in Medicare Savings Programs (MSPs) during the COVID-19 Public Health Emergency (PHE) period. Information provided in this letter references background information published in [MEDIL I 23-07](#).

## Background

Due to a recent court order issued in *Carr v. Becerra*, No. 22-cv-0098 (D. Conn.), a federal lawsuit challenging 42 U.S.C. § 433.400 promulgated under the November 6, 2020 interim final rule (“IFR”) and interpreting Section 6008(c)(3) of the Families First Coronavirus Response Act (“FFCRA”), CMS has notified DHCS that it will refrain from enforcing the IFR with respect to Medi-Cal beneficiaries enrolled in MSPs prior to a redetermination conducted after March 31, 2023. As a result, CMS reinstated its previous FFCRA Section 6008(b)(3) guidance in effect prior to the IFR with respect to MSP-enrolled beneficiaries, which precludes a state’s receipt of that section’s temporary COVID-19 increase in its federal medical assistance percentage if it transitions individuals enrolled in a MSP into another MSP providing lesser coverage, during the PHE period.

On February 10, 2023, DHCS published [MEDIL I 23-07](#) to inform counties that effective January 31, 2023, through March 31, 2023, counties shall cease to transition individuals enrolled in MSP programs to MSP programs providing lesser coverage. Movement from Qualified Medicare Beneficiary program (QMB) to Specified Low-Income Medicare Beneficiary program (SLMB) or QMB/SLMB to Qualifying Individual (QI) will be considered a negative action and shall not be processed until a full annual renewal is completed during the continuous coverage unwinding period as outlined in [ACWDL 22-18](#).

### **Policy Update**

On March 2, 2023 the *Becerra* Court issued another [order](#) clarifying that its January 31, 2023, order is applicable with respect to reinstatement of coverage back to the date(s) of termination for the affected beneficiary class. This March 2nd order explicitly references reinstatement of CMS guidance contained in Question B.7 in [CMS' April 2020 FAQs](#). The guidance embodied in Question B.7 clarifies that coverage must be reinstated back to affected beneficiary's date of termination, and where feasible, should be automatically reinstated.

DHCS will identify beneficiaries who moved from a Qualified Medicare Beneficiary program (QMB) to Specified Low-Income Medicare Beneficiary program (SLMB) or QMB/SLMB to Qualifying Individual (QI) from March 1, 2020, through March 31, 2023. DHCS will reinstate beneficiaries to their original MSP program directly in the Medi-Cal Eligibility Data System (MEDS). Beneficiaries will remain in the same tier of MSP coverage until their continuous coverage unwinding renewal is completed. DHCS will be noticing the impacted population about the reinstatement, including information on a reimbursement of any Medicare Part A premiums the beneficiary paid out-of-pocket.

Counties will receive a list of beneficiaries, specific to their county that DHCS reinstated as part of this effort. Once the county conducts a beneficiary's continuous coverage unwinding renewal, changes to eligibility are permissible. DHCS will issue additional guidance regarding the reinstatement list in a separate letter.

If you have any questions or require additional information, please contact Janis Kimball at (916) 345-8060 or by email at [Janis.Kimball@dhcs.ca.gov](mailto:Janis.Kimball@dhcs.ca.gov).

Original Signed By

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