June 27, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: CMS-4199-P Implementing Certain Provision of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules

Dear Administrator Brooks-LaSure:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to comment on the proposed rule implementing changes to the Medicare Part B enrollment process required by the Consolidated Appropriations Act, 2021 (CAA) (P.L. 116-260). The Beneficiary Enrollment Notification and Eligibility Simplification (BENES) Act—passed as part of the CAA—provides long-overdue solutions to modernize and simplify Part B enrollment and establishes important flexibilities for the Secretary to protect individuals facing exceptional circumstances.

AARP strongly supports eliminating the current coverage gaps in the fifth, sixth, and seventh month of a newly eligible Medicare beneficiary’s Initial Enrollment Period (IEP), as well as gaps in the annual General Enrollment Period (GEP), by establishing that Part B coverage begins the month immediately following enrollment in all IEP and GEP months, as required by the law. We also support giving the Secretary authority to establish additional Special Enrollment Periods (SEPs) for individuals who meet “exceptional conditions”, thereby avoiding late-enrollment penalties. In this proposed rule, CMS defines several exceptional situations that would merit granting an individual an SEP.

SEP for Individuals Impacted by an Emergency or Disaster
We support the proposed establishment of an SEP for people who are not able to enroll in Medicare if they reside in an area for which there has been a declared disaster or other emergency. CMS seeks comment on whether it should limit the timeframe of the SEP based on the type of emergency or the explicit impact on the individual’s ability to enroll. AARP believes such restrictions would be harmful to individuals and administratively burdensome to the Social Security Administration tasked with enrollment determinations. Since it is extremely unlikely that anyone would delay Medicare enrollment in hopes of a tragedy, the burden placed on individuals to prove that the emergency or disaster directly affected their ability to enroll is unnecessary and would delay needed coverage. Moreover, an already under-resourced Social Security Administration would be faced with the time consuming and nearly impossible task of evaluating the relationship between the emergency/disaster and the individual’s ability to enroll.

SEP for Health Plan or Employer Misrepresentation or Providing Incorrect Information
We support the proposed establishment of an SEP for individuals whose “non-enrollment in premium Part A or Part B is unintentional, inadvertent, or erroneous and results from material misrepresentation or
reliance on incorrect information provided by the individual's employer or group health plan, or any person authorized to act on behalf of the employer or group health plan.” We urge CMS, though, to be more inclusive of what is considered misinformation. Advice, information, and direction can come from several other legitimate sources in addition to employers and the plan operators. This includes brokers, insurance agents, and even state and local agencies. These trusted sources can still give wrong information that has lasting consequences for an individual’s Medicare enrollment. Furthermore, information is often conveyed over the phone, not in writing, making it difficult to prove they were given wrong information. We therefore urge CMS to establish an evidentiary standard that allows for the beneficiary’s testimony about their own experience. Finally, CMS should reconsider its position that omission of information is not a misrepresentation for purposes of this proposed SEP. Individuals need complete information about their options and responsibilities. An employer or health plan failing to convey pertinent information could impact an individual’s decision making and cause them to miss their Medicare enrollment period.

SEP for Formerly Incarcerated Individuals; SEP to Coordinate with Termination of Medicaid Coverage; SEP for Other Exceptional Conditions
AARP supports these additional SEPs to facilitate the transition to Medicare without loss of existing benefits or application of penalties. Thousands of people will be helped by the Secretary’s authority and ability to provide special enrollment periods in these and other circumstances where forces beyond the individual’s control present a barrier to their timely enrollment in Medicare.

Additional Suggested SEPs
We encourage CMS to develop a SEP for individuals who have been living outside of the United States and can show that they have been continuously covered by either private or a national health insurance.

Thank you for the opportunity to provide comments as you implement this important legislation. If you have any questions, please feel free to contact me or reach out to Andrew Scholnick of our Government Affairs team at ascholnick@aarp.org or 202-434-3793.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs