



## **Supreme Court upholds the Affordable Care Act:**

### ***What does this mean for Seniors?***

On June 28, 2012, the Supreme Court announced its decision to uphold the Affordable Care Act (ACA). As a result, improvements that advance the health and well-being of older adults, like strengthening Medicare, improving community long-term services and supports, and providing additional elder abuse and nursing home transparency protections, will continue to help improve the lives of seniors.

Even before the Supreme Court decision, through the Affordable Care Act, seniors began to see reductions in the cost of their prescription drugs and increased access to preventive health care. Thanks to the Supreme Court's decision the following provisions will continue to be provided to seniors:

#### *Medicare Improvements*

The ACA contains several important improvements to the Medicare program, many of which are already helping seniors today.

##### 1) Closing the donut hole

- a. Medicare Part D covers the cost of medications up to a certain point. Between that point, and a catastrophic coverage threshold, the older adult must pay out of pocket for medication (this gap in coverage is often called the Part D "donut hole"). One in four beneficiaries fall in this gap, and end up paying an average of \$3,610 out of pocket on drug expenses.
- b. The ACA requires drug manufacturers to reduce prices for Medicare enrollees in the donut hole. Beginning in 2011, brand-name drug manufacturers provided a 50% discount on brand-name and biologic drugs for Part D enrollees in the donut hole. By 2013, Medicare will begin to provide an additional discount on brand-name and biologic drugs for enrollees in the donut hole. By 2020, Part D enrollees will be responsible for only 25% of their brand-name drug costs while they are in the donut hole. This is a benefit seniors are getting now, and will continue to get as a result of this decision.

##### 2) Improving senior's access to preventive medical services

- a. Prior to the ACA, Medicare beneficiaries were required to pay a deductible and 20% copay for many preventive health services.
- b. The ACA eliminated cost-sharing for many preventive services and introduced an annual wellness visit for beneficiaries.

- c. The ACA also eliminated cost-sharing for screening services, like mammograms, Pap smears, bone mass measurements, depression screening, diabetes screening, HIV screening and obesity screenings.
- d. This is a benefit seniors are getting now, and will continue to get as a result of this decision.

### 3) Improving the coordination of care for those with Medicare and Medicaid/MaineCare

- a. For nine million dual eligibles (those on Medicare and Medicaid), the ACA funds demonstration projects intended to improve health care delivery and payment methods.
- b. 26 states have applied to participate in demonstrations to better coordinate care for dual eligibles.<sup>1</sup> These care coordination efforts will continue.

### 4) Reducing health disparities in Medicare and Medicaid/MaineCare

- a. The ACA requires the collection of race and ethnicity information to be used to identify and analyze health disparities.
- b. Various elements of the ACA require the provision of culturally and linguistically appropriate services and information.

### 5) Limiting cost-sharing for chemotherapy, dialysis and other services in Medicare Advantage plans

- a. Usually, Medicare Advantage plans have had more flexibility to impose cost-sharing than traditional fee-for-service (FFS) Medicare. Prior to the ACA, Medicare Advantage plans increased co-insurance for specific services. Beneficiaries who were enrolled in plans and who needed those services were left worse off than if they had the same conditions and were in FFS. Beneficiaries enrolled in plans may not have understood the differences in cost sharing.
- b. The ACA attempts to remedy this by preventing Medicare Advantage plans from imposing higher cost-sharing for chemotherapy and dialysis than is permitted under traditional FFS Medicare Parts A and B.
- c. The Centers for Medicare and Medicaid Services (CMS) issued final regulations on these improvements in 2011, and many became effective January 1, 2012.<sup>2</sup>

### 6) Improving care for individuals with chronic conditions

- a. The ACA has several provisions to improve the quality of care for patients with chronic illness and reduce the costs to Medicare and Medicaid/MaineCare for serving those beneficiaries.

### 7) Improving transitions for seniors from the hospital back home

- a. The ACA established the Community-Based Care Transition Program which targets individuals who are in traditional fee-for-service Medicare and are hospitalized and at risk for readmission. The program provides grants to hospitals to work with community-based organizations to provide transitional care interventions.
- b. 30 community-based organizations across the country have already partnered with local hospital systems and are committed to reducing readmissions by 20% and hospital acquired conditions by 40%.<sup>3</sup>

<sup>1</sup> Testimony of Melanie Bella, Director, Medicare - Medicaid Coordination Office, before the Senate Finance Committee (September, 2011), <http://www.finance.senate.gov/imo/media/doc/CMS%20testimony%20Dual%20Eligibles%20%28M.%20Bella%29%209.21.11.pdf>.

<sup>2</sup> The Center for Medicare Advocacy, New Rules for Medicare Advantage and Part D Plans, (June 2011)

<http://www.medicareadvocacy.org/2011/06/02/new-rules-for-medicare-advantage-and-part-d-plans>.

<sup>3</sup> CMS Community - Based Care Transitions Program, <http://www.innovations.cms.gov/initiatives/Partnership-for-Patients/CCTP/partners.html>.

8) Improving seniors access to primary care physicians

- a. Through the Independence at Home demonstration, the ACA will pay physicians and nurse practitioners to provide home-based primary care to targeted chronically ill individuals for a three-year period.
- b. CMS recently launched this primary care initiative with 16 practices across the country.<sup>4</sup>

9) Improving payment and service delivery models for health care:

- a. Through the Medicare-Medicaid Innovation Center, CMS will fund demonstrations to test innovative payment and health care delivery models that encourage doctors and hospitals to provide quality care at lower cost.
- b. These demonstrations are being developed and implemented now, through the Bundled Payment program, Comprehensive Primary Care Initiative, and Accountable Care Organizations, and more.<sup>5</sup>

*Expanded coverage under the minimum coverage provision for individual 50-64*

Access to adequate and affordable health insurance coverage is difficult for individuals 50-64, due to their age and likelihood of health problems. Because of this historic decision, when the minimum coverage provision is enacted in 2014, younger and healthier individuals will enter the insurance risk pool. Under the Affordable Care Act, health insurance companies will no longer be able to deny individuals insurance due to a pre-existing condition, or establish lifetime and annual limits on the dollar value of benefits. These improvements will make it easier and more cost-effective for 50-64 year olds to access and utilize health insurance. With this access, the “near-elderly” population will be healthier when they enter Medicare.

*Medicaid/MaineCare Long Term Services and Supports Improvements*

Several provisions in the ACA will make it easier for seniors to get long-term services and supports at home and in the community. Medicaid/MaineCare provides funding for long-term care services in institutions, such as nursing homes and in the community. Seniors prefer to receive care in their homes, and it is generally less expensive. However, most states spend their Medicaid primarily on institutional care.

The ACA includes incentives to encourage states to shift Medicaid spending from institutions to the community, so that individuals who require long-term care services may receive care in the least-restrictive environment. These incentives are not directly impacted by the Court’s decision regarding the Medicaid expansion. Elements of the ACA that enhance home and community long-term care include:

- 1) Community First Choice Option (CFCO) provides participating states with a six percentage point increase in federal Medicaid matching funds for providing community-based attendant services and supports to individuals who would otherwise be confined to a nursing home or other institution.<sup>6</sup>
- 2) Balancing Incentive Payment Program targets increased federal matching funds to states that spend less than half of their Medicaid long-term care expenditures on community-based care. This spring, six states received grants to improve their community-based care.<sup>7</sup>

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<sup>4</sup> CMS Independence at Home Demonstration, <http://www.innovations.cms.gov/initiatives/Independence-at-Home/index.htm>.

<sup>5</sup> CMS Innovation Center, <http://www.innovations.cms.gov>.

<sup>6</sup> Department of Health and Human Services News Release (April 2012), <http://www.hhs.gov/news/press/2012pres/04/20120426a.html>.

<sup>7</sup> Medicaid Balancing Incentive Payment Program,

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Balancing/Balancing-Incentive-Program.html>

- 3) Extending Medicaid's spousal impoverishment protection provisions to spouses of individuals who seek long-term care in the community. This rule goes into effect in 2014.<sup>8</sup>

*Elder abuse protections and nursing home transparency provisions*

The ACA will continue to enhance the safety and well-being of all vulnerable older adults. The law includes three provisions that would have been considered landmark legislation if enacted on their own:

- 1) The Elder Justice Act combats crimes committed against older adults, including financial exploitation and physical and mental abuse.
- 2) The Patient Safety and Abuse Prevention Act ensures that people who provide care for older adults provide it in a safe environment free from abuse.
- 3) The Nursing Home Transparency and Improvement Act increases transparency and accountability in nursing homes.

In addition to preserving these positive elements of the ACA, the Court's decision weakens the effectiveness of the law's Medicaid/MaineCare expansion. The Court upholds the expansion but does not allow the federal government to penalize states that choose not to expand eligibility. The Court's decision to effectively make these expansions an option for states will not directly impact people over 65, but could leave many poor adults, ages 50-64, who live in states that decide not to participate in expansion, without access to affordable health insurance. Congress and state legislatures will need to take action to ensure that this group is protected going forward.

**What to remember:**

Medicare will be stronger because of this decision, access to long-term care will be better because of this decision, and protections against elder abuse and fraud will be enforced because of this decision. This is a tremendous step forward for America's seniors and their families.

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<sup>8</sup> National Association of States United on Aging and Disability, Long - term Care In Brief, [http://www.nasuad.org/documentation/aca/NASUAD\\_materials/l tcb\\_protectionforHCBSrecipients.pdf](http://www.nasuad.org/documentation/aca/NASUAD_materials/l tcb_protectionforHCBSrecipients.pdf).