

#### **Two Free July Webinars: Dual Eligibles for Advocates**

##### *Quality, Affordable Care for Dual Eligibles*

July 13 at  
3:30 PM ET /  
12:30PM PT

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##### *Dual Eligibles: Consumer Protection, Integration & Advocates*

July 21 at  
2 PM ET / 11AM PT

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#### **CMS Issues Guidance on Medicaid Rules for Same Sex Partners**

The Centers for Medicare & Medicaid Services (CMS) has issued a letter to states that identifies strategies they may employ to address the adverse impact that the federal law's definition of "marriage" has on same-sex couples who receive Medicaid assistance.

Federal Medicaid law contains a number of important protections for spouses of Medicaid beneficiaries who receive coverage for long-term services and supports (LTSS). However, the 1996 "Defense of Marriage Act," or DOMA, codified at 1 U.S.C. §7, requires that references to a "spouse" in the federal law are to be strictly limited "to a person of the opposite sex who is a husband or wife."

Among other things, DOMA prohibits states that afford legal status to the relationships of same-sex couples from extending the Medicaid spousal protections to these couples. A common result may be that the same-sex spouse or domestic partner of a Medicaid LTSS recipient is forced into impoverishment and/or homelessness in the absence of the protections.

CMS' letter identifies for states how these inequitable results may be avoided. It primarily focuses on broad exceptions contained in various statutory provisions that relate to Medicaid LTSS coverage. For example, federal Medicaid law generally requires states to deny LTSS coverage to individuals who make gift transfers within five years of applying for Medicaid. Gifts between "spouses," however, are exempt. To overcome the narrow reach of the exemption resulting from DOMA's application, CMS points to the transfer statute's "undue hardship" exception, which permits states to forego coverage penalties in circumstances where the states believe hardship will otherwise result. CMS suggests that states use their authority to define "undue hardship" to include transfers between same-sex spouses or domestic partners.

See the CMS letter...

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