

Commissioners

Penny Thompson, MPA, *Chair*
Stacey Lampkin, FSA, MAAA, MPA,
Vice Chair
Melanie Bella, MBA
Brian Burwell
Martha Carter, DHSc, MBA, APRN,
CNM
Frederick Cerise, MD, MPH
Kisha Davis, MD, MPH
Toby Douglas, MPP, MPH
Leanna George
Darin Gordon
Christopher Gorton, MD, MHSA
Charles Milligan, JD, MPH
Sheldon Retchin, MD, MSPH
William Scanlon, PhD
Peter Szilagyi, MD, MPH
Alan Weil, JD, MPP
Katherine Weno, DDS, JD

Anne L. Schwartz, PhD,
Executive Director

December 28, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS-4185-P Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021

Dear Administrator Verma:

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule: Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 83 Fed. Reg. 54982 (November 1, 2018).

The proposed rule would implement requirements included in the Bipartisan Budget Act of 2018 (BBA 2018, P.L. 115-123), enacted in February of this year. BBA 2018 established new requirements for the integration of Medicare and Medicaid benefits in Medicare Advantage (MA) dual eligible special needs plans (D-SNPs) and directed the Secretary to unify grievance and appeals procedures for D-SNP enrollees to the extent feasible.

The Commission supports CMS's proposed approach to implementing these provisions of BBA 2018. The proposed rule is generally aligned with the Commission's interest in integration as a tool to improve care for dually eligible beneficiaries and potentially reduce costs.

New integration requirements

Under BBA 2018, D-SNPs must meet at least one of three requirements regarding the integration of Medicare and Medicaid benefits beginning in



contract year 2021. The approaches proposed, including the option implementing new minimum requirements that D-SNPs report hospital and skilled nursing facility admissions for certain high-risk beneficiaries, would move D-SNPs toward increased alignment, which the Commission supports.

As CMS continues to strengthen the D-SNP model of integrated care, the Commission would like to draw attention to a developing concern—so-called D-SNP look-alike plans. Look-alike plans offer design elements that target dually eligible beneficiaries such as their cost-sharing structure and supplemental benefits (MedPAC 2018, Rollins 2018). Because these are traditional MA plans, they are neither required to contract with states to ensure that a minimum integration standard is met nor are they required to meet model of care requirements.

We are concerned that the growth of look-alike plans may undermine efforts to promote increased integration through D-SNPs. As states make selective contracting decisions—in some cases to align D-SNPs with Medicaid managed care—managed care organizations may choose to create look-alikes when they are unable to secure state contracts. California, which has limited its D-SNP contracts in conjunction with the Financial Alignment Initiative (FAI), has experienced an increase in the number of look-alike plans in FAI-participating counties from 4 in 2013 to 19 in 2017 (MedPAC 2018). To the extent look-alike plans become available in other states that have focused on D-SNP contracts as a mechanism to promote integrated care, they may draw dually eligible beneficiaries away from the aligned plans.

In its contract year 2019 *Medicare Communications and Marketing Guidelines*, CMS included new provisions that may constrain plans and enrollment brokers seeking to enroll beneficiaries in look-alike plans, including prohibiting MA plans that are not D-SNPs from implying that they are designed for, or targeting their marketing to, dually eligible beneficiaries (CMS 2018). However, given our understanding of current market dynamics, we urge CMS to continue to monitor the growth of look-alike plans, identify their potential effects on integration efforts, and determine if further action needs to be taken either by the agency or Congress.

Unified grievance and appeals procedures

BBA 2018 required CMS to unify, to the extent feasible, Medicare and Medicaid grievances and appeals procedures for D-SNP beneficiaries no later than April 2020, for inclusion in contracts with health plans for 2021 and subsequent years. In the proposed rule, CMS would establish a new process for unifying grievance and appeals procedures at the health plan level for a subset of D-SNPs with exclusively aligned enrollment in which one organization is responsible for both Medicare and Medicaid coverage, although that may occur through separate contracts.

CMS has proposed limiting the scope of the new unified grievance and appeals process to this subset of D-SNPs due to the challenges associated with establishing a unified process when separate organizations are providing coverage to beneficiaries. In most states, D-SNP enrollees receive their Medicaid benefits from a separate health plan not affiliated with the D-SNP parent organization or through Medicaid fee for service. In those cases, the D-SNP does not have authority over the Medicaid grievance and appeals



process. Given these considerations, limiting unified procedures to a subset of D-SNPs is a reasonable approach.

The proposed rule also would limit the scope of the proposed unified process to the plan level, similar to the unified process already used in most states under FAI. Such alignment would offer dually eligible beneficiaries a single entity to process their appeals. Integrating processes beyond the plan level would present challenges due to the differences between a federally administered process under MA and one administered by the states in Medicaid. The Commission recognizes the difficulty in reconciling the differing jurisdictions that cover Medicare and Medicaid and supports CMS's decision to limit alignment to appeals at the health plan level.

Finally, the proposed rule implements a provision of BBA 2018 requiring the continuation of benefits while an appeal is pending, also referred to as aid paid pending. The Commission supports the application of Medicaid's aid paid pending policy to D-SNPs because it would enable dually eligible beneficiaries enrolled in such plans to continue receiving both their Medicare and Medicaid benefits during an appeal, an important protection for beneficiaries.

Sincerely,



Penny Thompson, MPA
Chair

cc: The Honorable Orrin G. Hatch, Chairman, Committee on Finance, U.S. Senate
The Honorable Ron Wyden, Ranking Member, Committee on Finance, U.S. Senate
The Honorable Greg Walden, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Frank Pallone Jr., Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Michael Burgess, Chairman, Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Gene Green, Ranking Member, Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives

References

Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2018. *Medicare communications and marketing guidelines*. Baltimore, MD: CMS. https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/CY2019-Medicare-Communications-and-Marketing-Guidelines_Updated-090518.pdf.

Medicare Payment Advisory Commission (MedPAC). 2018. Chapter 9: Managed care plans for dual-eligible beneficiaries. In *Report to Congress: Medicare and the Health Care Delivery System*. Washington, DC: MedPAC. http://www.medpac.gov/docs/default-source/reports/jun18_ch9_medpacreport_sec.pdf?sfvrsn=0.

Rollins, E. 2018. Promoting greater Medicare-Medicaid integration in dual-eligible special-needs plans. In transcript of the November 1, 2018 Medicare Payment Advisory Commission public meeting. Washington, DC: MedPAC. 201–243. <http://medpac.gov/docs/default-source/default-document-library/november-2018-transcripts.pdf?sfvrsn=0><http://medpac.gov/docs/default-source/default-document-library/november-2018-transcripts.pdf?sfvrsn=0>.

