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January 5, 2024

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

**Re: Proposed Rule on Policy and Technical Changes to Medicare Advantage
for Contract Year 2025 (CMS-4205-P)**

Dear Administrator Brooks-LaSure,

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 Program; Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly; Health Information Technology Standards and Implementation Specifications, 88 Fed. Reg. 219 (November 15, 2023).

The Commission's long-term vision is that all dually eligible beneficiaries should have access to integrated care. States are at different stages of integrating coverage for dually eligible beneficiaries, and the availability of integrated models as well as the level of integration offered in those models varies. Some states have achieved high levels of integration, while others offer few or no integrated coverage options. To provide an impetus for action, in June 2022, the Commission recommended that all states develop an integrated care strategy—including integration approach, eligibility and benefits covered, enrollment strategy, beneficiary protections, data analytics, and quality measurement—that would be structured to promote health equity. To support states in developing their strategies and raising the bar on integrated care, the Commission also recommended that Congress provide additional federal funding to states to assist them in their efforts to integrate Medicaid and Medicare coverage for dually eligible beneficiaries (MACPAC 2022).

One area of focus for the Commission is Medicare Advantage (MA) dual eligible special needs plans (D-SNPs) given their widespread availability, the number of dually eligible beneficiaries enrolled in them, and the requirement that D-SNPs contract with the state Medicaid agencies in which they operate. In 2023, more than 5 million dually eligible beneficiaries received their Medicare benefits and sometimes their Medicaid benefits through D-SNPs (CMS 2023). We applaud CMS for seeking to ensure D-SNPs are a meaningful vehicle for integration and our work in this area lends itself to commenting on several of the proposed changes in the rule.



The proposed rule would make a number of changes affecting dually eligible beneficiaries, including several interrelated provisions designed to increase the percentage of dually eligible beneficiaries that receive their Medicare and Medicaid coverage from the same parent organization:

- changes to the MA special enrollment period (SEP),
- limiting enrollment in certain D-SNPs to people also enrolled in an affiliated Medicaid managed care plan under the same parent company, and
- limiting the number of D-SNPs that organizations can offer in certain circumstances.

In addition, the proposed rule would change the threshold at which MA plans become D-SNP look-alike plans and expand access to MA encounter data for states. Our comments in this letter draw on our work in this area, including relevant recommendations.

Provisions to increase the percentage of dually eligible beneficiaries in managed care who receive their Medicare and Medicaid services from the same parent organization

The Commission supports the changes in the proposed rule that are intended to increase the percentage of dually eligible beneficiaries who are enrolled in MA plans that are also contracted to cover Medicaid benefits, operating under the same parent organization. It will be important, however, that CMS consider state capacity to develop integrated programs and fully understand the MA cycle. For example, during our December 2023 Commission meeting, we heard concerns from subject matter experts about near-term decisions that states make regarding procurement design and awardees that could have consequences from policies in the proposed rule that would take effect in 2027 or 2030. MACPAC has consistently heard and highlighted challenges regarding state staff capacity to develop long-term strategies affecting dually eligible beneficiaries, which make it difficult for states to anticipate how to craft an approach that will maximize integration opportunities that this proposed policy would make possible. To ensure maximum take-up and intended outcome from this proposed change, CMS should ensure technical assistance is available for states, particularly states with limited Medicare expertise and limited experience enrolling dually eligible beneficiaries in managed care, so that states can make informed decisions about D-SNP procurement.

Changes to the MA special enrollment period for dually eligible beneficiaries. MACPAC appreciates CMS's intent to prioritize integrated care by making changes to the quarterly dual SEP. The proposed rule would allow dually eligible beneficiaries to make monthly rather than quarterly changes to their coverage for purposes of enrolling in an integrated D-SNP that aligns with their Medicare enrollment, such as a highly integrated dual eligible special needs plan (HIDE SNP), a fully integrated dual eligible special needs plan (FIDE SNP), or a D-SNP designated as an applicable integrated plan. Dually eligible beneficiaries would no longer be able to elect a non-integrated D-SNP, such as a coordination-only D-SNP (CO D-SNP) or other MA prescription drug plan, outside of the initial coverage election period, annual election period, or where another SEP allows.

The proposed changes align with the Commission's interest in increasing enrollment in integrated products and with our prior recommendation to allow flexibility under the SEP for enrollment in integrated products. In June 2020, MACPAC recommended that CMS create an exception for Medicare-Medicaid plans (MMP) eligible beneficiaries from the quarterly SEP to allow them to enroll in an MMP on a monthly basis (MACPAC 2020a). For other purposes, such as switching plans or disenrolling, our recommendation treated MMP enrollees the same as all other dually eligible beneficiaries and maintained the quarterly SEP. The Commission noted that under our recommendation, dually eligible beneficiaries would benefit from the continuity of care that was intended under a more narrow, quarterly SEP while continuing to allow them to enroll in an MMP at any time (MACPAC 2020a).



Plan switching may also affect beneficiary experience by disrupting plan efforts to improve outcomes through quality interventions available under integrated care, such as care coordination, if beneficiaries are switching out of a managed care plan that they selected and into fee-for-service and then ultimately choosing to enroll in a different managed care plan. However, more evidence is needed about the characteristics of dually eligible beneficiaries who switch plans and their reasons for doing so as some plan switching may be necessary to ensure that beneficiary needs are met.

CMS notes that the proposed changes to the SEP would limit dually eligible beneficiaries' ability to change plans to fit their changing needs in states without integrated D-SNPs or with integrated D-SNPs that only serve certain parts of the state where the monthly SEP would not apply (CMS 2023). Additionally, CMS notes that plans may be slightly less likely to invest in meeting the needs of high-cost dually eligible beneficiaries that could elect to leave in any month; this plan switching could also hinder care coordination and create gaps in care. MACPAC appreciates CMS's acknowledgement of the varied landscape of integrated care across states and the challenges it can pose. HIDE SNPs and FIDE SNPs are not available in all states and most dually eligible beneficiaries enrolled in D-SNPs are enrolled in CO D-SNPs. MACPAC encourages CMS to identify ways to support states with limited integrated options in their efforts to improve care for dually eligible beneficiaries.

Enrollment limitations for MA plans that are not integrated. The Commission supports the changes in the proposed rule that would limit enrollment in certain D-SNPs to people enrolled in an affiliated Medicaid managed care plan under the same parent company and require that D-SNPs use exclusively aligned enrollment. CMS notes that a lack of federal action has created complex markets with confusing options for beneficiaries and the number of dually eligible beneficiaries with misaligned enrollment and the number of CO D-SNPs have grown. The Commission has also surfaced concerns about the multitude of options for beneficiaries to consider in the marketplace. Our research has highlighted that states may not always have the ability to include home- and community-based services or behavioral health services in their contracts, meaning that HIDE-SNPs and FIDE-SNPs are not widely or consistently available. Likewise, in our June 2023 Report to Congress, we highlighted that states may not have a managed care option in which to align enrollment (MACPAC 2023). The Commission views this proposed change as a good first step toward increasing the availability of aligned enrollment but it will only be applicable in a subset of states because a number of states do not provide long-term services and supports or behavioral health services through managed care.

CMS acknowledges that states have the ability under current law to require exclusively aligned enrollment in their state Medicaid agency contracts (SMACs) and to align plan offerings with state priorities. MACPAC has work underway to better understand how states use their contracts with D-SNPs. In our initial conversations with states, we have heard concerns about limited bandwidth to leverage the SMACs, which might explain in part why many states have not optimized the authority available to them under their SMACs. We support CMS efforts to reduce confusion for beneficiaries and streamline integrated offerings. We ask that CMS clarify what future efforts to advance aligned products might look like in states that do not have experience enrolling dually eligible beneficiaries in Medicaid managed care.

The Commission also supports the changes in the proposed rule that would limit an MA organization to offering only one D-SNP in the same service area as the organization's Medicaid managed care organization serving full-benefit dually eligible beneficiaries – meaning that CMS would only contract with one D-SNP for full-benefit dually eligible beneficiaries in the overlapping service area (CMS 2023). MACPAC has conducted prior work analyzing the number of plan types a dually eligible beneficiary might be enrolled in across their Medicare and Medicaid coverage (MACPAC 2016). As the number of D-SNP products has increased over time, beneficiaries may be overwhelmed by the number of choices they face, in particular when navigating coverage options across two programs.



Altogether, the Commission supports changes to limit confusion for beneficiaries and simplify the number of options across similar D-SNP products, allowing beneficiaries to make meaningful choices about their coverage (MACPAC 2021). However, we have noted the prominence of unaligned D-SNPs or CO D-SNPs in our prior work (MACPAC 2023). They are the most common type of D-SNP. In March 2023, about 57 percent of dually eligible beneficiaries who were enrolled in D-SNP products were enrolled in CO D-SNPs (MACPAC 2023, Rollins 2023). CMS states in the proposed rule that the majority of D-SNP enrollment is in CO D-SNPs or in integrated D-SNPs and Medicaid managed care organizations that are under different parent companies (CMS 2023). CMS also notes that enrollment growth in these unaligned plans is greater than enrollment growth in integrated D-SNPs which is of concern for the Commission (CMS 2023). The proposed changes, while important steps forward, leave room for future policy action by CMS to increase the availability of D-SNPs with higher levels of integration, beyond what is offered in CO D-SNPs today.

D-SNP look-alike plans

The Commission supports the change to lower the threshold at which an MA plan is identified as a D-SNP look-alike plan from 80 percent down to 70 percent in 2025 and ultimately to 60 percent in 2026. MACPAC considers D-SNP look-alike plans to be plans where dually eligible beneficiaries comprise more than 50 percent of all enrollees, drawn from prior Medicare Payment Advisory Commission (MedPAC) analysis (MACPAC 2020a and 2020b, MedPAC 2019). It is our view that these types of plans act at cross purposes to state and federal efforts to integrate care by drawing dually eligible beneficiaries away from integrated products and avoiding the additional requirements that D-SNPs must meet.

In our prior work, MACPAC analyzed enrollment growth in D-SNP look-alike plans relative to D-SNPs (MACPAC 2020a). Based on our review of MA bid data for 2020, we found that enrollment in look-alike plans with projected enrollment of more than 50 percent dually eligible beneficiaries grew by 23.4 percent from 2019 to 2020 but enrollment in D-SNPs grew by 13.9 percent over the same period. The Commission has expressed concern that enrollment growth in D-SNP look-alike plans exceeded that of D-SNPs because many states rely on D-SNPs aligned with Medicaid managed care plans to integrate care for dually eligible beneficiaries (MACPAC 2020a).

We urge continued rigor and analysis around D-SNP look-alike plan growth. In our April 2020 comment letter on proposed MA regulations, the Commission expressed support for CMS efforts to restrict D-SNP look-alike plans (MACPAC 2020b). We encouraged CMS to pay particular attention to the set of plans where dually eligible beneficiaries account for between 50 and 80 percent of total enrollment. We also suggest that CMS monitor growth in enrollment of dually eligible beneficiaries in other types of SNPs, including chronic condition dual eligible special needs plans and institutional special needs plans and identify any potential effects on integration efforts.

Medicare Advantage encounter data

The Commission supports the change to give states access to MA encounter data as it could improve states' ability to understand and improve care for dually eligible beneficiaries and could help state Medicaid programs in their efforts to integrate care for this population. CMS's proposed regulatory changes would give states access to MA encounter data for care coordination and quality improvement purposes without having to make changes to their SMACs with D-SNPs. It would also allow states to access the data before risk adjustment reconciliation is completed, avoiding potential delays of a year or more. MACPAC encourages CMS to make technical assistance available to states for purposes of using the MA encounter data as we have heard in the past that a lack of Medicare expertise can be challenging for states in making use of Medicare data.



Limited English proficiency

The Commission supports making health plan materials available in the languages most commonly spoken in the state. The proposed change aligns with work we have underway, more closely aligns Medicare requirements with existing Medicaid standards, reduces administrative burden on health plans, and may reduce health disparities for beneficiaries whose primary language is not English. CMS recognizes that individuals with limited English proficiency face barriers to accessing care and proposes to update regulations at 42 CFR 422.2267(e)(31) and (33) to better align the Multi-Language Insert (MLI) with existing Medicaid translation requirements found at 42 CFR 438.10(d)(2). The proposed change would update the CMS requirement that notices from MA plans to enrollees be provided based on the languages most commonly spoken in the state rather than in the nation.

This proposed change is consistent with MACPAC's current efforts to examine Medicaid enrollment and access barriers for people with LEP as well as the collection of primary language and LEP data for purposes of measuring and addressing Medicaid health disparities. Research has found that people with LEP are more likely to experience barriers during the enrollment and renewal process and have difficulties communicating with providers compared to those without LEP. These barriers can lead to loss or lapses in coverage and poor health outcomes for this population.

Thank you for the opportunity to comment on this proposed rule. We appreciate CMS's continued efforts to promote integration of Medicare and Medicaid for dually eligible beneficiaries. Please let us know if there is any additional information MACPAC can provide to assist in your consideration of our comments or that would be helpful as you finalize the rule.

Sincerely,



Melanie Bella, MBA
Chair

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