ICRC | Integrated Care Resource Center

Helping states develop integrated programs for individuals who are dually eligible for Medicare and Medicaid

April 10, 2023

Spotlight: CMS Issues Final Rule on Contract Year 2024 MA and Part D Policy and Technical Changes

On April 5, the Centers for Medicare & Medicaid Services (CMS) issued a final rule for the Medicare Advantage (MA) and Part D programs (CMS-4201-F). The rule strengthens beneficiary protections, improves access to behavioral health care, and promotes equity for millions of Americans with MA and Medicare Part D. This rule does not directly create new obligations or opportunities for states; however, states seeking to better integrate and coordinate care for their dually eligible populations may want to review the provisions summarized below. A more detailed description of the rule is available in the official CMS fact sheet.

The current online version of the final rule is a double-spaced unpublished PDF. The page numbers shown below are from that version. The final rule will be officially published in the April 12 *Federal Register.* ICRC will post a revised version of this e-alert with the *Federal Register* page numbers once the published version is available.

Changes to D-SNP Regulations

- **Adding Language Access Requirements.** CMS will require fully integrated dual eligible special needs plans (FIDE SNPs), highly integrated special needs plans (HIDE SNPs), and all applicable integrated plans (AIPs) to translate required materials into any languages required by the Medicare translation standard plus any additional languages required by their state's Medicaid translation standard.
    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.357-364.
    - Also note that a related provision described below regarding standing requests for materials to be provided in non-English languages or accessible formats also applies to D-SNPs.
- **Addressing Dual Eligible Special Needs Plan (D-SNP) Look-Alikes.** To close unforeseen loopholes in the regulation adopted to prohibit D-SNP look-alikes, CMS will:
    - **Apply Contracting Limitations for D-SNP Look-Alikes to MA Plan Segments.** CMS will apply the existing restrictions on D-SNP look-alikes to individual segments of the MA plan in the same way that those provisions apply to MA plans. As a result, CMS will not contract with or renew a contract with a plan segment where the segment is not a D-SNP and the enrollment thresholds described in § 422.514(d)(1) or (d)(2) are met.
    - **Apply Contracting Limitations for D-SNP Look-Alikes to Existing MA Plans.** CMS will amend § 422.514(d)(1) to apply it, as of the 2024 plan year, to both new and existing (that is, renewing) MA plans that are not D-SNPs and submit bids with projected enrollment of 80 percent or more of the plan's total enrollment are dually eligible for Medicare and Medicaid.

- **Clarify Contract Limitations for D-SNP Look-Alikes as a Basis for MA Contract Termination.** CMS will add clarifying language to § 422.510(a)(4)(xvi) to eliminate potential ambiguity regarding the bases on which it could terminate an MA contract.

    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.20-37.

Additional Key Changes

- **Expanding Low-Income Subsidies Under Medicare Part D.** To improve access to affordable prescription drug coverage for low-income Medicare beneficiaries, CMS will expand eligibility for the full low-income subsidy (LIS) benefit (also known as "Extra Help") to individuals with incomes up to 150 percent of the federal poverty level who meet eligibility criteria. Beginning January 1, 2024, this change will provide the full LIS benefit to individuals who currently qualify for the partial subsidy. The changes to LIS income requirements will also effectively sunset the partial LIS designation after plan year 2023.

    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.92-97.

- **Adding a Health Equity Index Reward.** In support of CMS' efforts to ensure attainment of the highest level of health for all people, the final rule adds a health equity index (HEI) reward to the Part C and Part D Star Ratings program to further incentivize MA and Part D plans to improve care for enrollees with certain social risk factors (SRFs), specifically enrollees who are dually eligible, receive the low-income subsidy, and/or have disability status. The HEI reward will be added to the overall and Part C and D summary star ratings for contracts that serve a minimum threshold of enrollees with SRFs and perform well on specific quality measures for their enrollees with SRFs. The HEI reward described at §§ 422.166(f)(3) and 423.186(f)(3) will replace the current reward factor described at §§ 422.166(f)(1) and 423.186(f)(1) starting with the 2027 Star Ratings. The HEI reward for the 2027 Star Ratings will be calculated using data collected or used for the 2026 and 2027 Star Ratings (2024 and 2025 measurement years).

    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.504-557.

- **Standing Request for Translated Materials and Materials in Accessible Formats.** To ensure access to important information and materials for individuals who have limited English proficiency and individuals with disabilities, CMS will require MA and Part D plans to provide required materials to enrollees on a standing basis in a non-English language or accessible format upon request or when otherwise learning of the enrollee's primary language or need for accessible format. This means that once a plan learns of an enrollee's need for materials in an alternate format – whether through an enrollee requesting a material in a primary non-English language or alternate format, during a health risk assessment, or another touch point – the plan must provide required materials in that language and/or accessible format as long as the enrollee remains enrolled in the plan or until the enrollee requests that the plan provide required materials in a different manner. This requirement also applies to the individualized plans of care for special needs plan (SNP) enrollees.

    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.332-357.

- **Improving Access to Behavioral Health.** To promote building strong MA behavioral health networks that improve timely access to services, CMS will: (1) add Clinical Psychologists and Licensed Clinical Social Workers as specialty provider types, setting network standards for them and making them eligible for the 10-percentage point telehealth credit; (2) amend general service access standards to include explicitly behavioral health services; (3) codify standards for appointment wait times for primary care and behavioral health services; (4) clarify that emergency behavioral health services must not be subject to prior authorization; (5) require that MA organizations notify enrollees when the enrollee's behavioral health or primary care provider(s) are dropped midyear from networks; and (6) require MA organizations to establish care coordination programs, including coordination of community, social, and behavioral health services to help move towards parity between behavioral health and physical health services and advance whole-person care.
    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.148-171.
- **Adding Marketing Protections.** To help protect people with Medicare from confusing and potentially misleading marketing and ensure they have accurate and necessary information to make coverage choices that best meet their needs, the final rule will add restrictions on MA and Part D plan marketing practices. It also reinstates important protections that prevent predatory behavior and finalizes changes that strengthen the role of plans in monitoring agent and broker activity. These regulatory changes are applicable for Contract Year 2024 and beyond and so apply to marketing and communications materials and activities beginning for the 2024 Contract Year, including the distribution of 2024 materials beginning September 30, 2023.
    - For a discussion of comments received on the proposed rule, CMS responses, and a summary of the final provisions, see pp.365-436.