

CMS Issues CY2025 Notice of Proposed Rulemaking

On November 6, 2023, the Centers for Medicare & Medicaid Services (CMS) issued a [Notice of Proposed Rulemaking](#) (NPRM) on the Medicare Advantage (MA) program, Medicare Prescription Drug Benefit Program (Part D), Medicare Cost Plan Program, Programs of All-Inclusive Care for the Elderly (PACE), and Health Information Technology Standards and Implementation Specifications. CMS also issued a [fact sheet](#) summarizing the major provisions of the NPRM.

CMS will accept comments on the proposed rule received by 5 p.m. on January 5, 2024. To submit comments electronically, go to <http://www.regulations.gov> and follow the "Submit a comment" instructions referencing file code CMS-4205-P.

The proposed rule includes several provisions that may be of interest to state Medicaid agencies, including the following proposals related to MA dual eligible special needs plans (D-SNPs):

- **Inter-related provisions aimed at increasing the percentage of dually eligible managed care enrollees who receive both Medicare and Medicaid benefits through the same organization** – CMS proposes to:
 - Replace the current quarterly special enrollment period (SEP) with a one-time-per-month SEP for dually eligible individuals and others enrolled in the Part D low-income subsidy program to elect a standalone Part D plan (pp. 286 – 296);
 - Create a new integrated care SEP to allow dually eligible individuals to elect to enroll in an integrated D-SNP on a monthly basis (pp. 286 – 296);
 - Limit enrollment in certain D-SNPs to those who are also enrolled in an affiliated Medicaid managed care plan through the same parent company (pp. 296 – 310); and
 - Limit the number of D-SNPs that organizations can offer in certain circumstances (pp. 296 – 310).
- **Limits on out-of-network cost sharing for D-SNP preferred provider organizations (PPOs)** – CMS proposes to limit out-of-network cost sharing for D-SNP PPOs for specific services, starting in 2026, to reduce cost shifting to Medicaid, increase payments to safety net providers, expand dually eligible enrollees' access to providers, and protect dually eligible enrollees from unaffordable costs (pp. 336 – 346).
- **Lowering the threshold for D-SNP "look-alike" plans** – CMS proposes to lower the threshold for identifying a D-SNP look-alike plan over a two-year period. Currently, CMS identifies D-SNP look-alike plans as MA plans in which 80 percent or more of the plan's enrollees are dually eligible. In the NPRM, CMS proposes to decrease this threshold to 60 percent (pp. 322 – 335).

CMS is also soliciting comments on: (1) **adding information about Medicaid benefits to the Medicare Plan Finder tool for Applicable Integrated Plan (AIP) D-SNPs** (pp. 311 – 313) and (2) **use of state enrollment vendors to support enrollment in integrated D-SNPs** (pp. 314 – 319).

In addition to the D-SNP-related provisions, the NPRM proposes to:

- Update the regulatory language at 42 CFR 422.2267(e)(31) and 423.2267(e)(33) regarding the **multi-language insert** to better align with the Medicaid translation requirements at § 438.10(d)(2) by requiring that a notice of

availability be provided based on the languages most commonly spoken in the *state* rather than *nationally*. This would allow the notice to more accurately reflect the languages spoken and make it easier for AIPs to provide clear, concise information about available supports while complying with both sets of federal requirements (pp. 134 – 143).

- Expand the permissible uses of MA encounter data to **enable CMS to share MA encounter data with state Medicaid agencies to support the Medicaid program** for program administration and evaluations and analysis, **including sharing MA encounter data with States prior to reconciliation for care coordination** of dually eligible individuals (pp. 144 – 162).
 - This proposal includes a **comment solicitation on making MA encounter data available to States for quality review and improvement activities prior to reconciliation** to support Child and Adult Core Set reporting. Specifically, CMS is interested in comments on balancing considerations related to the timeliness of quality reporting with accuracy and completeness of the MA encounter data.

Other provisions that may be of interest to some states include proposals regarding MA supplemental benefits (pp. 174 – 194 and pp. 228 – 235), new guardrails for MA and Part D plan agent and broker compensation to prevent anti-competitive plan “steering” (pp. 236 – 252), and a proposal to add new behavioral health provider types to MA network adequacy standards in accordance with new rules allowing those providers to bill Medicare for their services (pp. 18-25).

The current online version of the proposed rule is a double-spaced, unpublished PDF. The page numbers shown above are from that version. The official version of the proposed rule will be published in the November 15 *Federal Register*. ICRC will post a revised version of this e-alert with the updated *Federal Register* page numbers once the published version is available.

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