

CMS Finalizes Improvements in Medicare Managed Care for Dual Eligibles

On April 29, 2022, the [Centers for Medicare and Medicare Services \(CMS\) finalized rules](#) that improved the operation and oversight of Dual Eligible Special Needs plans (D-SNPs) and also addressed a number of issues in Medicare Advantage and Medicare Part D. The [CMS fact sheet is available here](#).

The changes affecting D-SNPs are of particular interest to advocates for low income older adults. D-SNPs, Medicare managed care plans that only enroll dual eligible members, are designed to coordinate Medicare and Medicaid benefits for enrollees. D-SNPs are growing fast—currently one in four dual eligibles receives Medicare benefits through a D-SNP. Parts of the final rule that become effective January 1, 2023, and are of particular interest to advocates include:

- **Consumer Advisory Committees:** All D-SNPs must establish advisory committees of consumers who are members of the plan. CMS allows, but does not require, plan sponsors to consolidate advisory committees in states where the plan sponsor operates more than one D-SNP.

For state advocates: Advisory committees can be effective sources of advice and accountability for plans or can be merely window dressing. Advocates can play an important role by engaging with the state and plan sponsors to ensure that advisory committees are well designed and that members can effectively represent the diversity of plan enrollees.

- **Separate D-SNP contracts:** The regulations allow, but do not require, states to enter into separate contracts with D-SNPs, with the result that both the state and CMS will monitor the performance of the D-SNP on its own with quality measures, including those affecting star ratings, separately calculated. Currently, D-SNPs are included in master contracts with other Medicare Advantage plans operated by a plan sponsor, making it more difficult for regulators, advocates and consumers to get an accurate picture of how a D-SNP is performing.

For state advocates: We urge advocates to work with their state to take advantage of this new provision so that there will be more transparency about the operation and quality of particular D-SNPs.

- **Unified appeals:** The new rule requires unified appeals at the plan level for all D-SNPs that are exclusively aligned. To be “exclusively aligned,” a D-SNP must operate an affiliated Medicaid managed care plan and must limit its membership to dual eligible enrollees who are also enrolled in the affiliated plan. The unified appeal requirement means that if a plan member requests an item or service that could be covered by Medicare or Medicaid, for example, durable medical equipment, the plan must, both at the initial request and at the level of the internal plan appeal, consider the request under both Medicare and Medicaid rules

and issue a single decision that addresses both coverage rules. For appeals above the plan level, enrollees have the option of pursuing appeals through the Medicare or Medicaid route, or through both routes.

- *For state advocates:* The unified appeals process reduces the burden on plan members and the medical providers who submit information supporting the member's claim as well as on advocates supporting them. Advocates can work with plans and states to ensure that member materials, including denial notices, are clear.
- **Unwinding of the financial alignment initiative:** CMS has determined that it will end the financial alignment initiative (FAI), a demonstration project in several states where Medicare-Medicaid plans (MMPs) combined services under both programs with a single payment stream. CMS will focus instead on expanding the D-SNP model, while incorporating lessons learned from the demonstration. In the final rule, CMS set 2025 as the end date by which MMPs can be transitioned into D-SNPs.

For state advocates: In states that participated in the FAI, there will be many issues around transitioning enrollees in MMPs into D-SNPs, including, especially, care continuity. Designing a successful transition will require intensive work both by advocates and the states.

The rulemaking involves many more technical improvements in D-SNP definitions, oversight mechanisms and operational requirements. In addition to D-SNPs, the rulemaking included changes in Part D and Medicare Advantage regulations. Two such items of particular interest for advocates are:

- **Multi-language inserts:** CMS has renewed a requirement, which had been eliminated in the prior administration, that plans include a notice in multiple languages with important documents sent to plan members alerting them to the availability of interpreters to assist them.
- **Third party marketing:** CMS told Medicare Advantage plans that they are responsible for misleading messaging by third party marketers promoting their plans. The regulation was in response to the barrage of television and radio marketing designed to channel beneficiaries to insurance brokers who would then market plans. In many cases, the marketing either overstated the extent of benefits or suggested that the communication was from government entities.

For more information on D-SNPs, see Justice in Aging's [webinar](#) and [issue brief](#), Dual Eligible Special Needs Plans, What Advocates Need to Know.