ICRC | Integrated Care Resource Center

November 2, 2018

Spotlight: CMS Proposes New Requirements for D-SNP Medicaid Integration and Unified Grievance and Appeals Procedures

COMMENTS DUE DECEMBER 31, 2018

In the November 1, 2018 *Federal Register*, the Centers for Medicaid & Medicaid Services (CMS) published a notice of proposed new rulemaking for Medicare Advantage and Part D that would implement provisions of the Bipartisan Budget Act of 2018 related to integration of Medicare and Medicaid services and unification of Medicare and Medicaid grievance and appeals procedures by Dual Eligible Special Needs Plans (D-SNPs). The page numbers shown below are from the November 1, 2018 *Federal Register* publication of the proposed rule.

Integration Requirements

The Bipartisan Budget Act of 2018 directs CMS to establish minimum Medicaid integration standards for D-SNPs within certain statutory parameters. CMS proposes (pp. 54992-54999 and [for the proposed regulatory language] 55077-55079) that D-SNPs could meet the new Medicare-Medicaid integration criteria by:

- **Covering Medicaid LTSS and/or behavioral health services.** D-SNPs could contract with the state to provide Medicaid long-term services and supports and/or Medicaid behavioral health benefits. The state contract could be either directly with the legal entity providing the D-SNP, with the parent organization of the D-SNP, or with a subsidiary owned and controlled by the parent organization of the D-SNP; and/or
- **Sharing information with the state on care transitions by high-risk individuals.** D-SNPs could contract with the state Medicaid agency to establish a process to share information with the state or the state's designee (such as a Medicaid managed care organization) on hospital and skilled nursing facility admissions of high-risk individuals who are enrolled in the D-SNP. The proposal provides flexibility to states to specify the subpopulation(s) of high-risk full-benefit dual eligible individuals on which D-SNPs should provide such notification.

A 2021 effective date will require state action by early 2020. The proposed rule would require state contracts with D-SNPs for calendar year (CY) 2021 to reflect the CMS proposed integration criteria. Since D-SNP contracts with states are due by July 1, 2020, states should begin working with interested D-SNPs well in advance of that date. If CMS determines a D-SNP does not meet the new integration requirements starting in 2021, the agency proposes to exercise its authority under the statute to apply marketing and enrollment sanctions to the D-SNP until it determines the requirements are being met.

Comments sought on specific issues. CMS seeks comments on the proposed integration criteria and a number of related updates and clarifications to existing regulations to codify guidance and policy for D-SNPs. Some areas of specific interest to states where CMS is specifically seeking comment include:

- Proposed new integration requirements for D-SNPs (p. 54993)
- Proposed definitions of D-SNP, fully integrated D-SNP (FIDE SNP), highly integrated D-SNP (HIDE SNP), and aligned enrollment (pp. 54993-54995)
- Requirements for D-SNP contracts with states (pp. 54996-54998)
- Proposed requirements that non-FIDE or non-HIDE D-SNPs must meet (p. 54998)

- Proposed notification requirements for non-FIDE or non-HIDE D-SNPs, including how state Medicaid agencies would fulfill the requirements and other options considered (p. 54998)
- The impacts of partial-benefit dual eligible individuals enrolling in D-SNPs (p. 54999)

Unified Grievance and Appeals Procedures for D-SNPs and Medicaid Managed Care Plans with Aligned Enrollment

The Bipartisan Budget Act of 2018 also directs CMS to unify Medicare and Medicaid appeals and grievances processes, to the extent feasible, for D-SNP enrollees.

Proposed unification requirements would apply only to plans with exclusively aligned enrollment. CMS proposes rules to unify Medicare and Medicaid grievance and plan-level appeals processes for certain D-SNPs and affiliated Medicaid managed care plans (pp. 54999-55015 and [for the proposed regulatory language] pp. 55077-55084). The processes would apply to D-SNPs with "exclusively aligned enrollment," where one organization is responsible for managing Medicare and Medicaid benefits for all D-SNP enrollees through the D-SNP and the affiliated Medicaid managed care plan. In such plans, which are called "applicable integrated plans" in the proposal, the proposal is intended to provide enrollees a simpler, more straightforward grievance and appeals process. The proposed rules would take effect in 2021, but states would have the option to implement in 2020. States using D-SNPs and aligned Medicaid managed care plans as platforms for integration should review the definition of "applicable integrated plans" on pp. 55003-55004 to see if it incorporates the types of Medicaid plans the state uses as aligned Medicaid plans for D-SNPs. CMS estimates on p. 55004 that there are currently only 37 plans in 8 states covering approximately 150,000 enrollees nationwide that would meet the requirements for exclusively aligned enrollment.

- **One timeline for resolution of grievances.** For grievances (i.e., complaints to a health plan), this generally means these plans will use one set of rules with one timeline that governs resolution of all grievances. For example, Medicare Advantage rules say that a grievance must be filed within 60 days of the event. Medicaid managed care rules allow enrollees to file a grievance at any time. The proposed rule adopts the Medicaid rule and applies it to D-SNPs and Medicaid MCOs that are applicable integrated plans. For details, see pp. 55006-55008 and (for the proposed regulatory language) 55079-55081.
- **One unified process for appeals.** For appeals, the proposed rule establishes one process for applicable integrated plans to determine if they will cover a requested item/service, and if they do not, one unified process for a beneficiary to pursue an appeal. The unified process includes providing aid pending appeal for all Medicare and Medicaid services, instead of just for Medicaid services as exists under currently law. In addition, the unified process proposes a single set of rules to govern procedural matters such as timelines and rules for authorization. For details, see pp. 55008-55009, 55012-55015 and (for the proposed regulatory language) 55082-55084.
- **No change to post-plan appeals processes.** The proposed rule does not make changes to the post-plan appeals process (i.e., state fair hearings and Medicare appeals). CMS does, however, request comments on how such a process might be established in the future under existing authorities.

Proposed requirements for all D-SNPs to assist with Medicaid-related grievances and access to care issues. CMS also proposes requirements that all D-SNPs assist their enrollees with Medicaid-related grievances and addressing access to care issues as part of the D-SNPs' existing responsibility to coordinate the delivery of Medicaid benefits. For details, see pp. 55001-55003 and (for the proposed regulatory language) 55077-55079.

Comments sought on specific issues. Some areas of specific interest to states where CMS is specifically seeking comments include:

- How D-SNPs without aligned enrollment would assist enrollees in filing grievances and appeals when such D-SNPs might have financial and clinical responsibility for the disputed services, potentially presenting a conflict of interest (p. 55002)
- Suggestions for other examples of assistance that D-SNPs should offer to enrollees in regulation or sub-regulatory guidance (pp. 55002-55003)
- If the definition of an "applicable integrated plan" subject to the unified grievance and appeals rules is appropriate (pp. 55003-55005)
- How best to accommodate state-by-state variability in appeals procedures (p.55006)
- Whether the proposed rule adequately harmonizes Medicare and Medicaid's rules regarding authorized representatives and providers' ability to request an appeal (p. 55006)
- Whether CMS has adequately captured all relevant enrollee protections for grievances (p. 55007)
- How to approach aid provided while an appeal is pending (pp. 55008-55009)
- The timeframe for resolving regular and expedited integrated reconsiderations (pp.55013-55014)

CMS Estimates of Regulatory Burden on States and Health Plans

States may also want to review the CMS estimates of "Collection of Information Requirements" beginning at p. 55041 of the proposed rule to see what CMS is assuming with respect to the responsibilities states and health plan would have under the proposed rule. The estimates for the D-SNP integration requirements are on pp. 55042-55045 and the estimates for unified grievances and appeals are on pp. 55045-55047.

Comments are due on December 31, 2018 and may be submitted electronically at: https://www.cms.gov/Regulations-and-Guidance/Regulations-and-Policies/eRulemaking/index.html?redirect=/eRulemaking