



## **MEDICARE-MEDICAID COORDINATION OFFICE**

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**DATE:** October 7, 2019

**TO:** Dual Eligible Special Needs Plans

**FROM:** Sharon Donovan  
Director, Program Alignment Group

**SUBJECT:** CY 2021 Medicare-Medicaid Integration and Unified Appeals and Grievance Requirements for Dual Eligible Special Needs Plans (D-SNPs)

The Bipartisan Budget Act (BBA) of 2018 permanently authorized Dual Eligible Special Needs Plans (D-SNPs), strengthened Medicare-Medicaid integration requirements, and directed the establishment of procedures to unify Medicare and Medicaid grievance and appeals procedures to the extent feasible for D-SNPs beginning in 2021. On April 16, 2019, CMS finalized rules (hereafter referred to as the April 2019 final rule) to implement these new statutory provisions.<sup>1</sup> This memorandum summarizes the new requirements and provides guidance to D-SNPs on the contract and operational changes needed for each type of D-SNP beginning for Contract Year (CY) 2021.

### **Summary of New D-SNP Requirements**

We summarize the D-SNP requirements CMS codified in the April 2019 final rule below.

#### ***Integration Requirements***

Starting in CY 2021, D-SNPs must meet the new Medicare-Medicaid integration criteria in at least one of the following ways:

- By meeting the requirements to be designated as a fully integrated Dual Eligible SNP (FIDE SNP), as defined at 42 CFR 422.2. A FIDE SNP is offered by the legal entity that also has a state contract as a Medicaid managed care organization (MCO) to provide Medicaid benefits, including long-term services and supports (LTSS) and behavioral health benefits, consistent with state policy; or
- By meeting the requirements to be designated as a highly integrated D-SNP (HIDE SNP), as defined at 42 CFR 422.2. A HIDE SNP covers Medicaid LTSS and/or Medicaid behavioral health benefits, consistent with state policy, under a state contract 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; or
- By having a contract with the state specifying a process to share information with the state, or the state's designee (such as a Medicaid MCO or an area agency on aging), on

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<sup>1</sup> See CMS-4185-F, the "Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Programs of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021" final rule. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-06822.pdf>.

hospital and skilled nursing facility (SNF) admissions for at least one group of high-risk individuals who are enrolled in the D-SNP, as provided at 42 CFR 422.107(d).

### ***Unified Appeals and Grievances Processes***

Certain D-SNPs and affiliated Medicaid managed care plans – specifically, those with “exclusively aligned enrollment” as described in more detail in the “Unified Appeals and Grievance Requirements for FIDE SNPs and HIDE SNPs with Exclusively Aligned Enrollment” section of this memorandum – must implement unified Medicare and Medicaid grievance and plan-level appeals processes starting in CY 2021. For these plans and their enrollees, implementation of the April 2019 final rule requirements will provide simpler, more straightforward grievance and appeals processes.

### **State Medicaid Agency Contract and Operational Changes**

All D-SNPs must have executed contracts with applicable state Medicaid agencies, referred to as the “State Medicaid Agency Contract” (SMAC), as provided under section 1859(f)(3)(D) of the Social Security Act and 42 CFR 422.107. This section of the memorandum describes the SMAC and operational changes D-SNPs must implement to operate in CY 2021 and beyond. The first subsection describes requirements that apply to all D-SNPs. Subsequent subsections describe requirements that apply only to certain subsets of D-SNPs.

### ***Requirements for all D-SNPs***

D-SNPs are required to submit by the first Monday in July a SMAC to CMS for each state in which they seek to operate for the upcoming contract year. CY 2021 contracts must be submitted to CMS by July 6, 2020. Unlike in prior years, for CY 2021, D-SNPs with an evergreen SMAC will not be able to only submit letters of good standing with a previously executed SMAC from their respective states.

The April 2019 final rule modified several existing SMAC requirements that apply to all D-SNPs and added new requirements for some D-SNPs. To comply with these requirements for CY 2021, D-SNPs will need to work with state Medicaid agencies in advance of July 2020. (See the “Key Dates for D-SNPs” section of this memorandum for more information.) The table below highlights these changes to the minimum state contract elements.

<b><i>The SMAC must document:</i></b>
<b>1. Revised:</b> The D-SNP’s: (1) responsibility to coordinate the delivery of Medicaid benefits; and (2) if applicable, responsibility to provide coverage of Medicaid services.
<b>2. Revised:</b> The category(ies) and criteria for eligibility for dually eligible individuals to be enrolled under the D-SNP (e.g., conditions of eligibility under Medicaid, such as nursing home level of care and age or requirement for D-SNP enrollees to enroll in a companion Medicaid plan to receive their Medicaid services).
<b>3. Revised:</b> The Medicaid benefits covered under a capitated contract between the state Medicaid agency and the MA organization offering the D-SNP, the D-SNP’s parent organization, or another entity that is owned and controlled by the D-SNP’s parent organization.
<b>4.</b> The cost-sharing protections covered under the D-SNP.
<b>5.</b> The identification and sharing of information on Medicaid provider participation.
<b>6.</b> The verification of enrollees’ eligibility for both Medicare and Medicaid.
<b>7.</b> The service area covered by the D-SNP.

***The SMAC must document:***

<b>8.</b> The contract period for the D-SNP.
<b>9. <i>New:</i></b> For a D-SNP that is not a FIDE SNP or HIDE SNP, a requirement for notification of hospital or SNF admissions for at least one designated group of “high risk” enrollees (see the “Information Sharing Requirements for all D-SNPs except FIDE SNPs and HIDE SNPs” section of this memorandum for more information).
<b>10. <i>New:</i></b> For a D-SNP that is an applicable integrated plan, a requirement for the use of the unified appeals and grievance procedures (see the “Unified Appeals and Grievance Requirements for FIDE SNPs and HIDE SNPs with Exclusively Aligned Enrollment” section of this memorandum for more information).

In addition to the above contract requirements, 42 CFR 422.562(a)(5), codified in the April 2019 final rule and effective beginning 2020, requires that all D-SNPs assist their enrollees with Medicaid-related grievances and address access to care issues (such as filing appeals) as part of D-SNPs’ responsibility to coordinate the delivery of Medicaid benefits in 42 CFR 422.2.

***Information Sharing Requirements for All D-SNPs except FIDE SNPs and HIDE SNPs***

As provided under 42 CFR 422.107(d), D-SNPs that do not contract with a state as FIDE SNPs or HIDE SNPs must include the additional minimum SMAC requirement to specify a process to share information on hospital and SNF admissions starting for CY 2021. For the purpose of coordinating Medicare and Medicaid-covered services between settings of care, the SMAC must describe:

- The process whereby the D-SNP notifies, or arranges for another entity or entities to notify, the state (and/or the state’s designee) of hospital and SNF admissions for at least one group of high-risk full-benefit dually eligible individuals, identified by the state;
- The timeframe and methods by which such notice is provided; and
- The group(s) of high-risk full-benefit dually eligible individuals for whom the notice is provided.

The April 2019 final rule provides flexibility to the state on the parameters of the notification process, including:

- The manner in which notification occurs and how data is exchanged;
- The recipient(s) of the notification; and
- The group of high-risk full-benefit dually eligible individuals to which the notification applies, with no requirement on minimum size.

A state and a D-SNP may arrange for other entities to perform their respective obligations with respect to the notification. A state could contract with a D-SNP such that the D-SNP meets the notification requirement by arranging for another entity – such as a hospital – to notify the state or its designees when the various parties participate in a health information exchange (HIE) or other notification system

We encourage D-SNPs to engage with states and stakeholders as soon as possible to identify the most effective approaches and processes for this notification requirement. We note some existing resources for technical assistance and best practices at the end of this memorandum.

### ***Requirements for All FIDE SNPs and HIDE SNPs***

Beginning with CY2021, CMS is establishing a new procedure for identifying a D-SNP as a FIDE SNP or HIDE SNP when fully executed SMACs are submitted to CMS on the first Monday of July 2020. MA organizations seeking to offer FIDE SNPs and HIDE SNPs must request a CMS review of the SMAC so that CMS can confirm it complies with the contract requirements for FIDE SNPs and HIDE SNPs.

### ***Unified Appeals and Grievance Requirements for FIDE SNPs and HIDE SNPs with Exclusively Aligned Enrollment***

A subset of FIDE SNPs and HIDE SNPs with exclusively aligned enrollment must implement the unified appeals and grievance procedures described in 42 CFR 422.629 – 634 beginning in 2021. In the regulations, we refer to these plans as “applicable integrated plans,” defined at 42 CFR 422.561 as FIDE SNPs or HIDE SNPs with exclusively aligned enrollment, where state policy limits the D-SNP’s membership to a Medicaid managed care plan offered by the same organization. (In addition, the Medicaid MCO that covers Medicaid benefits for the dually eligible individuals in the FIDE SNP or HIDE SNP with exclusively aligned enrollment is also an applicable integrated plan subject to the unified appeals and grievance procedures under 42 CFR 438.210 and 438.402.) In such plans, one organization is responsible for managing Medicare and Medicaid benefits for all D-SNP enrollees.

SMACs for these plans must include provisions that the D-SNP uses the unified appeals and grievance procedures under 42 CFR 422.629 through 422.634, as well as conforming Medicaid managed care rules at 438.210, 438.400, and 438.402. The unified appeals process includes use of a specialized integrated denial notice (see 42 CFR 422.631(d)) for applicable integrated plans. CMS is developing a model of this and other appeals and grievance notices and will provide opportunities for comment before finalizing them.

As specified in the April 2019 final rule, states have the discretion to implement standards different than those established in the final rule if the state standards are more protective for enrollees, such as shorter timelines for a plan to make a decision on an appeal (see 42 CFR 422.629(c)). The SMAC must specify any requirements where the states use this discretion to implement standards different than those in 42 CFR 422.629 through 422.634, and D-SNPs must comply with any state-specific requirements in the SMAC. States may also need to make changes to Medicaid MCO contracts for the applicable integrated plans to specify the additional requirements for unified grievances and appeals from 42 CFR 422.629 through 422.634, 438.210, 438.400, and 438.402.

### **Intermediate Sanctions**

As provided in 42 CFR 422.752, for any D-SNP not meeting the integration criteria listed in this memorandum and specified at 42 CFR 422.2, CMS will impose, during plan years 2021 through 2025, intermediate sanctions specified at 42 CFR 422.750(a). CMS will impose intermediate sanctions specifically where CMS determines that a D-SNP fails to meet at least one of the criteria for the integration of Medicare and Medicaid benefits provided in the definition of a D-SNP at 42 CFR 422.2 and specified above.

### **Key Dates for D-SNPs**

All D-SNPs are required to submit a new SMAC (or an evergreen SMAC with a contract addendum) to CMS for each state in which they seek to operate in for CY 2021 by Monday July 6, 2020. This includes, as applicable, the new contract requirements codified in 42 CFR 422.107(c) and (d) and summarized in this memorandum. **Therefore, we strongly encourage**

**states and D-SNPs to begin discussing SMAC updates as soon as possible.** The table below provides key dates and activities for states and D-SNPs related to compliance with the new requirements.

Month/Year	Activity
Fall 2019	<ul style="list-style-type: none"> <li>States and D-SNPs begin drafting changes needed to ensure SMAC meets new requirement</li> <li>States plan for any needed MCO contract changes</li> </ul>
Winter 2020	<ul style="list-style-type: none"> <li>States and D-SNPs identify and create any new policies and procedures needed in response to contract changes</li> </ul>
January 2020	<ul style="list-style-type: none"> <li>CMS releases Contract Year 2021 MA (SNP) applications</li> </ul>
February 2020	<ul style="list-style-type: none"> <li>SNP applications (including SNP service area expansion applications) due to CMS</li> </ul>
Spring 2020	<ul style="list-style-type: none"> <li>States and D-SNPs finalize SMACs</li> </ul>
June 2020	<ul style="list-style-type: none"> <li>D-SNPs not renewing MA contracts notify CMS in writing</li> <li>Bid submission deadline</li> </ul>
July 2020	<ul style="list-style-type: none"> <li>D-SNPs submit SMAC and related documents to CMS by Monday July 6, 2020</li> </ul>
July/August 2020	<ul style="list-style-type: none"> <li>D-SNPs work with CMS and states to address deficiencies in SMACs</li> </ul>
Summer 2020 - Fall 2020	<ul style="list-style-type: none"> <li>States and D-SNPs finalize policies and procedures for CY 2021</li> </ul>
August/September 2020	<ul style="list-style-type: none"> <li>CMS issues SMAC status review letters and, as applicable, intermediate sanction letters</li> <li>D-SNPs send Annual Notice of Change and Evidence of Coverage (including information about any changes to grievances and appeals procedures for applicable integrated plans) to current enrollees</li> </ul>
January 1, 2021	<ul style="list-style-type: none"> <li>Effective date for most April 2019 final rule provisions</li> </ul>

## Resources

The CMS Medicare-Medicaid Coordination Office (MMCO) works across CMS and with states to better serve dually eligible individuals, including through efforts to better align the Medicare and Medicaid programs through integrated service delivery under D-SNPs. We are providing technical assistance to states to help with implementation of these new requirements through the Integrated Care Resource Center (ICRC). We believe the information for states will also be helpful to D-SNPs as they update SMACs to meet the requirements detailed in this memorandum.

Listed below are currently available resources.

- [Update on State Contracting with D-SNPs: The Basics and Meeting New Federal Requirements for 2021](https://www.integratedcareresourcecenter.com/webinar/update-state-contracting-d-)**  
<https://www.integratedcareresourcecenter.com/webinar/update-state-contracting-d->

[snps-basics-and-meeting-new-federal-requirements-2021](#)) provides an overview of state strategies for contracting with D-SNPs to improve care coordination and Medicare-Medicaid alignment for dually eligible enrollees. Special attention is given to new federal D-SNP integration standards for 2021 contract year, and how states can help plans to meet these requirements.

- **Promoting Information Sharing by Dual Eligible Special Needs Plans to Improve Care Transitions: State Options and Considerations**  
(<https://www.integratedcareresourcecenter.com/resource/promoting-information-sharing-dual-eligible-special-needs-plans-improve-care-transitions>) examines the approaches used by three states to develop and implement information-sharing processes for their D-SNPs that support care transitions. The brief includes examples of contract language and strategies to encourage plan collaboration and problem solving around information sharing. It can help states, D-SNPs, and other stakeholders assess how to meet the new D-SNP contracting requirements and improve the care of dually eligible individuals.
- **Information Sharing to Improve Care Coordination for High-Risk Dual Eligible Special Needs Plans Enrollees: Key Questions for State Implementation**  
(<https://www.integratedcareresourcecenter.com/resource/information-sharing-improve-care-coordination-high-risk-dual-eligible-special-needs-plan>) offers key questions and considerations that states can review as they begin working with D-SNPs and other parties to design and implement information-sharing requirements. This technical assistance tool includes sample contract language.

Additionally, we expect ICRC to develop and disseminate sample contract language that both state and D-SNPs can use to develop their SMACs.

### **More Information**

For any questions about the contents of this memorandum, D-SNPs should contact their account manager.