



MEDICARE-MEDICAID COORDINATION OFFICE

DATE: April 13, 2020

TO: Dual Eligible Special Needs Plans

FROM: Sharon Donovan
Director, Program Alignment Group

SUBJECT: Updated CMS Processes for Dual Eligible Special Needs Plan (D-SNP) Implementing CY 2021 Medicare-Medicaid Integration and Unified Appeals and Grievance Requirements in Response to Coronavirus Disease 2019 (COVID-19); Clarification on Direct Contracts with States

Coronavirus Disease 2019 (COVID-19) presents new challenges for Dual Eligible Special Needs Plans (D-SNPs) and states in implementing CMS regulations¹ that codify statutory provisions of the Bipartisan Budget Act of 2018. As provided in these regulations, starting in CY 2021, D-SNPs must meet the new Medicare-Medicaid integration criteria as specified in the definition of a D-SNP at 42 CFR 422.2. Additionally, certain fully integrated D-SNPs (FIDE SNPs) and highly integrated D-SNPs (HIDE SNPs) and their affiliated Medicaid managed care plans—specifically, those with exclusively aligned enrollment defined as “applicable integrated plans” at 42 CFR 422.561—must implement the unified appeals and grievance procedures described in 42 CFR 422.629 – 422.634 beginning in 2021.² The contract between the state Medicaid agency and the D-SNP, required by section 1859(f)(3) of the Act and 42 CFR 422.107, must address both the new integration criteria and, as applicable, compliance with the new unified appeals and grievance procedures.

In response to the unique circumstances resulting from D-SNPs’ and states’ priority focus on reducing the risks of COVID-19 transmission and maintaining continuity of operations, this memorandum outlines updated CMS processes for review and approval of state Medicaid agency contracts (SMACs) for contract year 2021. Our goal is to provide D-SNPs and states with as much additional time as possible to execute contracts consistent with these new regulatory requirements prior to the January 1, 2021, effective date.

CMS Process for Review and Approval of State Medicaid Agency Contracts

In our October 7, 2019, Health Plan Management System (HPMS) memorandum,³ we stated that the deadline for D-SNPs to submit a new SMAC, or an evergreen SMAC with a contract amendment, is Monday, July 6, 2020. **While CMS will maintain the July 6, 2020 deadline for an initial submission, we will extend our review and approval timelines** to ensure D-SNPs

¹ 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. Available at <https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-06822.pdf>.

² See also 42 CFR 438.400 and 438.402(a) (as amended effective January 1, 2021).

³ See <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/DSNPsIntegrationUnifiedAppealsGrievancesMemorandumCY202110072019.pdf>.

have sufficient time to work with states to resubmit revised SMACs or SMAC amendments that meet the Medicaid integration and/or unified appeals and grievance requirements, as applicable. Specifically, D-SNPs will have until November 2, 2020, for final submissions rather than needing to submit final revisions by August 2020.

By July 6, 2020, Medicare Advantage (MA) organizations seeking CMS approval to offer a D-SNP in 2021 must submit at least one of the following:

1. A CY 2021 SMAC that meets all relevant requirements at 42 CFR 422.107(c) and (d);
2. A CY 2021 SMAC that contains at least all the required contractual elements at 42 CFR 422.107(c)(1) - (8), with a statement from the MA organization that an amendment or updated contract to address 42 CFR 422.107(c)(9) and/or (d) will be submitted by November 2, 2020; or
3. An evergreen SMAC that contains the required contractual elements at 42 CFR 422.107(c)(1) – (8), with a letter of good standing and a statement from the MA organization that an amendment or updated contract to address 42 CFR 422.107(c)(9) and/or (d) will be submitted by November 2, 2020.

Although CMS is providing additional time for submission of SMAC documentation, CMS will not delay other processes in place for CY 2021 contracts, including contract execution, while the additional submissions are pending. Regardless of which of the above three options an MA organization uses, MA organizations will have additional opportunities for resubmission—beyond the standard cure opportunity offered several weeks following the initial submission—prior to November 2, 2020, for contract deficiencies related to compliance with the integration requirements at 42 CFR 422.2 or, for applicable integrated plans, for the unified appeals and grievance procedures requirement to be documented in the SMAC as provided under 42 CFR 422.107(c)(9).

For purposes of compliance with the CY 2021 requirements, CMS will make a final determination whether all integration and/or appeals and grievance requirements are met based on these final submissions. CMS will approve compliant SMACs prior to November 2, 2020, on a flow basis.

Following November 2, 2020, CMS will make determinations about the imposition of sanctions under 42 CFR 422.752 for any D-SNP that fails to meet at least one of the three criteria for the integration of Medicare and Medicaid benefits. In addition, failure to correct deficiencies related to the applicable contract language pursuant to 42 CFR 422.107(c)(9) for CY 2021 contracts may result in CMS imposing additional remedies available under law, including contract terminations, intermediate sanctions, penalties, or other enforcement actions as described in 42 CFR Part 422.

The table below provides key dates and activities for states and D-SNPs related to compliance with the new requirements and replaces the table in our October 7, 2019, HPMS memorandum.

Month/Year	Activity
Spring – Early Summer 2020	<ul style="list-style-type: none"> CMS staff conduct informal reviews of draft SMAC language at state or D-SNP request. Interested states or D-SNPs can send draft SMAC language to DSNP_Operations@cms.hhs.gov
Spring – Fall 2020	<ul style="list-style-type: none"> States and D-SNPs finalize SMACs.
Late May 2020	<ul style="list-style-type: none"> HPMS gates open for SMAC submissions
June 1, 2020	<ul style="list-style-type: none"> D-SNPs not renewing MA contracts notify CMS in writing Bid submission deadline
July 6, 2020	<ul style="list-style-type: none"> D-SNPs submit SMACs and related documents to CMS
Late July 2020	<ul style="list-style-type: none"> CMS issues first round SMAC status review letters
July – October 2020	<ul style="list-style-type: none"> D-SNPs work with CMS and states to address deficiencies in SMACs
September 2020	<ul style="list-style-type: none"> 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
November 2, 2020	<ul style="list-style-type: none"> Latest date for submission of a SMAC that complies with integration and/or unified appeals and grievance procedures, as appropriate
Late 2020	<ul style="list-style-type: none"> As applicable, CMS imposes enforcement remedies under the law for D-SNPs that do not meet the integration requirements at 42 CFR 422.2 and/or for D-SNPs that do not meet the requirement for unified appeals and grievance procedures (described at 422.629–422.634) to be documented in the SMAC as provided under 42 CFR 422.107(c)(9)
January 1, 2021	<ul style="list-style-type: none"> Effective date for most April 2019 final rule provisions

Requirement for Direct Contracting with States

Although CMS will provide opportunities for resubmissions throughout the SMAC review process for CY 2021 in addition to those noted in earlier guidance, we clarify that D-SNPs may ultimately meet the SMAC requirements only via a direct contract with the state. Guidance issued prior to the effective date of our regulations implementing D-SNP integration requirements stated that CMS may consider subcontracting arrangements with Medicaid managed care plans to be equivalent to a direct state contract, provided the subcontract met all of the requirements of 42 CFR 422.107 and was approved by the state. Such guidance was a time-limited exception to SMAC requirements to address state-specific Medicaid contracting issues that are no longer relevant. Consistent with the revised SMAC requirements and the new definition of a D-SNP codified in the April 2019 final rule, a plan must have a direct contract with the state Medicaid agency to meet the definition of a D-SNP at 42 CFR 422.2. CMS no longer considers subcontracting arrangements with Medicaid managed care plans in lieu of SMACs to approve a plan as a D-SNP.

We appreciate D-SNPs' ongoing commitment to the health and wellbeing of dually eligible individuals. For any questions about the contents of this memorandum, D-SNPs may send questions to MMCO_DSNPOperations@cms.hhs.gov.