February 13, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: Proposed Rule on Policy and Technical Changes to Medicare Advantage and Medicare Part D for Contract Year 2024 (CMS-4201-P)

Dear Administrator Brooks-LaSure:

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule: Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, Medicare Parts A, B, C, and D Overpayment Provisions of the Affordable Care Act and Programs of All-Inclusive Care for the Elderly; Health Information Technology Standards and Implementation Specifications, 87 Fed. Reg. 247 (December 27, 2022).

The Commission's long-term vision is for all dually eligible beneficiaries to be enrolled in an integrated model. Our longstanding view is that integrating care has the potential to improve beneficiary experience and reduce federal and state spending that may arise from duplication of services or poor care coordination, while promoting equity. To that end, the Commission's work has focused on three key goals: increasing enrollment in integrated products, making integrated products more widely available, and promoting greater integration in existing products. The Commission has engaged in a substantial amount of work in this policy area, ultimately leading to a recommendation in June 2022 that all states develop a strategy to integrate care. Because of their widespread availability and the number of dually eligible beneficiaries enrolled in Medicare Advantage (MA) dual eligible special needs plans (D-SNPs), D-SNPs have become an area of focus for the Commission.

The proposed rule would make a number of changes affecting dually eligible beneficiaries, including closing loopholes for D-SNP look-alike plans, expanding language access, protecting beneficiaries from confusing or misleading marketing, increasing access to coverage of Medicare Part D premiums through the Low-Income Subsidy (LIS) program, and closing potential gaps in prescription drug coverage that Medicaid beneficiaries may face in the transition to Medicare or to dually eligible status.

D-SNP Look-Alike Plans

The Commission supports CMS's efforts in the proposed rule to close unforeseen loopholes that have allowed D-SNP look-alike plans to persist. It is our view that these types of plans act at cross purposes to state and federal efforts to integrate care by drawing dually eligible beneficiaries away from integrated products and avoiding the additional requirements D-SNPs have. We remain concerned that while CMS's focus on plans where 80 percent or more of all enrollees are dually eligible addresses the most egregious instances, there could still be a real risk of growth in D-SNP look-alike plans falling below the 80 percent threshold and thus continuing to detract from federal and state efforts to integrate care.

In prior work, the Commission found that from 2019 to 2020, enrollment growth in dually eligible beneficiary enrollment in look-alike plans was most notable in plans that were over a 50 percent threshold. About 88,500 beneficiaries were in D-SNP look-alike plans that comprised more than 50 but not over 80 percent of dually eligible beneficiaries (about one-third of D-SNP look-alike plan enrollment) (MACPAC 2020a). In our April 2020 comment letter on proposed MA regulations, the Commission expressed support for CMS efforts to restrict D-SNP look-alike plans (MACPAC 2020a). We also urged CMS to pay particular attention to the set of plans where dually eligible beneficiaries account for between 50 and 80 percent of total enrollment.

We would encourage CMS to continue monitoring this issue as we have an ongoing concern that D-SNP look-alike plan growth, at lower thresholds, may undermine federal and state integrated care efforts by attracting dually eligible beneficiaries who may otherwise have enrolled in integrated products.

Language Access

The Commission supports this change as it expands language access and adopts existing Medicaid standards in an effort to improve equity for beneficiaries whose primary language is not English. According to CMS, about 1.8 million dually eligible beneficiaries do not speak English fluently or speak a language other than English at home (CMS 2022a). MACPAC has found that dually eligible beneficiaries are more likely to be from racial or ethnic minority groups than Medicare-only beneficiaries (MACPAC and MedPAC 2023). For example, in 2020, 17 percent of dually eligible beneficiaries were Hispanic compared to 6 percent of Medicare beneficiaries who are not dually eligible (MACPAC and MedPAC 2023). CMS notes that dually eligible beneficiaries also have low health literacy and yet are required to navigate a more complex system of coverage than non-dually eligible individuals because they are enrolled in two programs.

Marketing

The Commission supports the proposed changes to Medicare Advantage and Medicare Part D marketing practices as they are designed to protect Medicare beneficiaries, including dually eligible beneficiaries, from being confused or misled by inaccurate information. Although CMS already prohibits plans from using inaccurate or misleading information, CMS notes specific instances in the proposed rule in which beneficiaries have received confusing or misleading information such as a mailing with a number formatted to look like an official Medicare beneficiary number. For this reason, CMS is specifically prohibiting the misleading use of the Medicare name, the CMS logo, and information issued by the federal government such as the Medicare card. The Commission supports efforts to help beneficiaries obtain clear and accurate information about their coverage so that they can make an informed and meaningful choice.

Medicare Part D Low-Income Subsidy (LIS) Program

The Commission supports the proposed change to expand eligibility for the full subsidy under the LIS program from 135 percent of the federal poverty level (FPL) to 150 percent of the FPL. From an equity perspective, the Commission believes that increasing the number of Medicare beneficiaries eligible for assistance with coverage of out-of-pocket Medicare costs can facilitate access to care. This proposed change also aligns with the Commission's prior work and recommendations to improve participation in the Medicare Savings Programs (MSPs) because cost sharing assistance can affect beneficiaries' use of services (MACPAC 2020b). Our work on the MSPs has focused on removing misalignments between LIS eligibility determination processes and those that states use for the MSPs, some of which we were pleased to see CMS address in proposed rulemaking earlier this year for which the Commission submitted comments (MACPAC 2022b, CMS 2022b). The Commission considered a similar change in previous discussions of policy options to improve participation in the MSPs, which was to increase the income threshold for the Qualifying Individual program from 135 percent to 150 percent of the FPL to better align with the upper income limit under the LIS program for the partial subsidy (MACPAC 2019).

Limited Income Newly Eligible Transition (LI NET) Program

The Commission supports the change in the proposed rule that would establish LI NET as a permanent program. This proposed change would help certain low-income Medicaid beneficiaries avoid potential gaps in their prescription drug coverage and improve access to care. Specifically, it would help individuals transitioning from Medicaid to Medicare or to dually eligible status whose Medicaid prescription drug coverage is replaced by coverage under Medicare Part D but who may not have chosen a prescription drug coverage plan yet or whose coverage has not yet taken effect. By providing coverage of prescription drugs in the interim, the LI NET program is an important bridge to making sure beneficiaries don't experience gaps in care or incur out-of-pocket costs.

Thank you for the opportunity to comment on this proposed rule. We appreciate CMS's continued efforts to promote equity and address disparities, particularly for dually eligible beneficiaries.

Sincerely,

Melanie Bella, MBA

Chair

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