January 29, 2026

State and Federal Tools for Ensuring Accountability of Medicaid Managed Care Organizations

Policy Options

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Overview

- Background
- Findings
- Policy options
- Next steps

Background

- 41 states and the District of Columbia contract with comprehensive, risk-based managed care organizations (MCOs)
- Almost three-quarters (73 percent) of beneficiaries are enrolled in managed care, and managed care is more than half (56 percent) of Medicaid benefit spending
- States contract with MCOs through a competitive procurement (Request for Proposal or RFP) or a non-competitive application

Requirements for Federal Oversight

- Oversight of procurement is limited to conflict of interest safeguards and verifying contractors are eligible for at-risk contracts
- CMS must approve state-MCO contracts and actuarial rate certifications
- CMS has the authority to deny federal match on capitation payments for non-compliance with federal requirements and can deny federal match for new enrollees upon recommendation from the state Medicaid agency
- CMS may refer to the Office of the Inspector General (OIG) for additional civil monetary penalties

Federal Requirements for State Oversight

- States may not enter into contracts with MCOs unless the state has established intermediate sanctions
- States must establish intermediate sanctions for specific instances in which the MCO acts or fails to act
- Imposing sanctions is discretionary; states can impose additional sanctions under state law

Findings

Study Methodology

- We conducted stakeholder interviews with:
  - State Medicaid agency officials
  - MCO representatives
  - Medicaid health plan trade associations
  - Relevant federal agencies
  - National experts/organizations
- We reviewed and analyzed Managed Care Program Annual Reports (MCPARs) submitted for performance year 2023 (September 2023 through August 2024) from 34 states
  - States are required to post MCPARs on their state Medicaid website, and CMS posts MCPARs from states in a central repository on Medicaid.gov

CMS lacks proportional authority in managed care similar to fee for service

- CMS has fewer tools to directly address specific MCO deficiencies compared to fee-for-service (FFS) Medicaid
- In FFS, CMS can withhold, defer, or disallow federal match on specific services or claims, which allows the penalty to be proportional to the severity of noncompliance
- Under current law, CMS can defer federal matching funds only for the entire amount of the capitation payment made to the managed care plan
  - In practice, CMS rarely uses this authority because withholding the entire capitation payment can disrupt the financing of all beneficiary care, not just the particular issue

MCPAR data on accountability tools need clarification and standardization

- Federal regulation specifies that the MCPAR include the results of any sanctions, corrective action plans (CAPs), or other formal or informal intervention with a contracted MCO to improve performance
- Current MCPAR instructions and technical assistance do not provide sufficient clarity on what constitutes "informal interventions" or how to appropriately report various accountability actions, such as:
  - Verbal warnings during routine monitoring calls
  - Requests for additional data or information about compliance issues before formal intervention
  - Informal performance improvement discussions
  - Liquidated damages
- This broad language can leave room for interpretation regarding which specific oversight actions to report and how to categorize them

MCPAR data on accountability tools need clarification and standardization, cont.

- States vary in what they report on the MCPARs
- Based on our analysis, it is likely states are not reporting all compliance actions in MCPARs
  - 359 CAPs from 25 states
  - 19 CAPs and liquidated damages from 2 states
  - 106 civil monetary penalties from 11 states
  - 187 liquidated damages from 10 states
  - 66 compliance letter sanctions from 8 states
- For example, one state did not report liquidated damages in MCPAR because the state does not consider them to be a sanction

States need better tools and guidance to assess plan performance across multiple sources

- MCOs and states are required to report performance data across a variety of sources (e.g., MCPARs, external quality review (EQR), quality rating system (QRS))
- These data are not publicly available in a user-friendly format that states can leverage during the procurement process or beneficiaries can use to inform MCO choice
  - Reports are not in a format conducive for analysis where information can be combined easily across plans and states and across reports
  - Stakeholders noted that it can be challenging to compare MCOs if each state and plan highlights different metrics
- There are opportunities for states to use these performance data to improve procurement and oversight generally

Policy Options

Policy Option 1

- **Congress should amend Section 1903(m) of the Social Security Act (the Act) to allow CMS to withhold, defer, or disallow federal match for all or part of managed care capitation payments**
  - This authority would allow CMS to withhold, defer, or disallow a portion of capitation payments proportional to the severity of noncompliance, rather than requiring CMS to withhold federal match on the entire capitation payment
  - The authority would only apply to noncompliance with existing federal requirements specified in Section 1932 of the Act or 42 CFR 438; it would not expand the areas for which CMS could withhold, defer, or disallow federal match
  - Similar to withhold, deferral, or disallowance decisions on the FFS side, any CMS action would be subject to reconsideration and appeal

Policy Option 1: Rationale

- Current federal authority only allows CMS to withhold the federal match on the entire capitation payment to an MCO
- Federal officials interviewed indicated this is a limitation in accountability tools available to them
  - This limitation makes it difficult for CMS to use its enforcement authority proportionally to address specific deficiencies in managed care
  - CMS has attempted to address this gap in the past
- This option would equalize the federal enforcement tools across FFS and managed care
  - FFS regulations have specific provisions for a CAP and withholds or deferrals of federal match to address access issues
  - Managed care regulations have provisions for a remedy plan to address access issues, but no specific regulatory reference to withholds or deferrals

Policy Option 1: Implications

- States would still retain their primary role in enforcing MCO contract requirements and performance standards, but CMS would have more leverage and flexibility to address serious compliance issues
- MCOs could face reductions in capitation revenue, but may have additional incentive to work with states to address compliance issues promptly
- This option could lead to more consistent enforcement of federal requirements that protect beneficiary access and quality of care across both FFS and managed care

Policy Option 2

- **CMS should provide clarification and guidance to support MCPAR data accessibility and completeness**
  - This guidance could be provided through updated MCPAR instructions, technical assistance resources, or a combination of these approaches
  - CMS should clarify reporting requirements for:
    - Liquidated damages
    - Informal interventions that states may use before escalating to formal sanctions
    - Other accountability actions that are in response to plan noncompliance

Policy Option 2: Rationale

- Current federal regulation specifies that the MCPAR must include the results of any sanctions, CAPs, or other formal or informal intervention with a contracted MCO to improve performance
- Our analysis showed evidence of inconsistent reporting, such as reporting of liquidated damages as a sanction
- Our stakeholder interviews found that states commonly use informal accountability actions before escalating to formal sanction, but it is unclear whether and how to report informal interventions on MCPAR
- MCPARs are still in early years of implementation, so it may be an opportune time for additional guidance and standardization

Policy Option 2: Implications

- This option would require CMS to identify where additional clarification and standardization are needed
  - CMS would need to develop and disseminate updated instructions, data definitions, and potentially a standardized reporting template
- States are already required to collect these data, and the guidance would focus on what or how to report
- Improved MCPAR data would allow stakeholders to have a more complete picture of plan performance
- Additional clarity and standardization may provide a more comparable assessment of plan performance across states

Policy Option 3

- **CMS should issue guidance and/or toolkits on how to effectively use available data to assess plan performance**
  - CMS would provide guidance on how states can use different sources such as MCPAR, EQR, and QRS together to link information across plans and states
  - Potential examples of guidance and tools that CMS could provide include:
    - Technical guidance on data linkage
    - Past performance assessment framework
    - Procurement evaluation toolkit
    - State learning collaborative
    - Public reporting guidance

Policy Option 3: Rationale

- States currently struggle to access and use multiple sources of MCO performance data effectively
  - Several interviewees suggested that CMS could help states by developing better tools to access and compare MCO performance data across state lines
  - National experts suggested that CMS could do more to help state Medicaid agencies better understand MCO performance in other states, such as repeat problems across years or multiple states
- Federal and national experts agreed that public reporting of MCO performance, including sanctions, is an important tool for driving improvements in performance and better outcomes for enrollees, but emphasized that it needs to be in an accessible, understandable format to be effective
- This option would build upon MACPAC's prior March 2025 recommendation on EQRs

Policy Option 3: Implications

- This option would provide states with a more complete picture of plan performance and could improve their ability to procure high-performing plans and implement more effective accountability provisions in contracts
  - States would likely not experience additional burden; participation would be optional and guidance would focus on helping states make better use of data they are already required to report
- Performance data that are publicly available and readily accessible can improve the ability of all stakeholders to assess plan performance and make informed decisions, including CMS, beneficiaries, providers, and researchers

Next Steps

- Commissioner feedback on the three policy options:
  - Do draft policy options address the key challenges identified through our work?
  - Are there considerations for further refining the draft policy options?

- If there is support for moving forward with any of these policy options, staff will return with recommendation language in March

Summary of Policy Options

	Description
1	Congress should amend Section 1903(m) of the Social Security Act to allow CMS to withhold, defer, or disallow federal match for all or part of managed care capitation payments
2	CMS should provide clarification and guidance to support MCPAR data accessibility and completeness
3	CMS should issue guidance and/or toolkits on how to effectively use available data to assess plan performance

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JANUARY MEETING

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