



Briefing Paper

D-SNP Assistance Requirements for Enrollee Access to Medicaid

© December 2019

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Introduction

Congress and CMS, along with states, consumer advocates, and health plans, have been working to integrate care for individuals dually eligible for Medicare and Medicaid. Individuals dually eligible for Medicare and Medicaid often experience a fragmented delivery system, with benefits not only fragmented between Medicare and Medicaid, but also between different plan sponsors. Therefore, D-SNPs are often confronted with requests for assistance from enrollees with different plan sponsors for Medicaid benefits. This brief seeks to help D-SNPs understand what type of assistance CMS expects them to provide, particularly when an enrollee's request involves a different plan or delivery system sponsor.

Scope of Problem

Some D-SNP enrollees (an unknown, but substantial number) are enrolled in two or more unrelated plans or delivery systems, often with Medicaid MLTSS and/or behavioral health benefits delivered through fee-for-service (FFS) or under a different MCO. Medicare-Medicaid beneficiaries enrolled in two or three unrelated plans or delivery systems will require assistance with navigating their fragmented care, and CMS has made it explicitly clear through regulation that D-SNPs are expected to provide some level of assistance to their enrollees. These plans, where enrollment is not aligned under the same MCO, are referred to as “unaligned plans” or “unaligned enrollment.” In situations of unaligned enrollment, CMS expects that enrollees will seek D-SNP assistance regarding matters involving a different plan or delivery system sponsor, typically the organization providing Medicaid FFS or the parent organization providing Medicaid MLTSS and/or behavioral health. The level of assistance required of the D-SNP is the purpose of the remainder of this brief.

Regulatory Framework for D-SNP Provision of Assistance

In the April 2019 Final Rule CMS defined the scope of mandatory standards for requiring “all D-SNPs to assist beneficiaries with Medicaid coverage issues and grievances, including authorizations for or appeals related to Medicaid-related services” by adding § 422.562 (a)(5). (April 2019 Final Rule Preamble)¹ The types of assistance required of D-SNPs are outlined in the final rule, which codifies the statutory requirement that D-SNPs, as a function of solely enrolling individuals dually eligible for Medicare and

¹ CMS, HHS, April 2019 Final Rule, Fed. Reg. Volume. 84, No. 73. Tuesday, April 16, 2019. (P. 15723)

Medicaid services, “coordinate the delivery of Medicare and Medicaid services for individuals who are eligible for such services, whether or not the D-SNP itself contracts with the state to provide Medicaid services.” (April 2019 Final Rule Preamble)² D-SNPs will receive requests from enrollees regarding services, appeals, and/or grievances related to Medicaid-covered services, whether the Medicaid coverage is aligned or not. When enrollees request such services, the D-SNP “must provide a certain level of assistance to the enrollee.” (April 2019 Final Rule Preamble)³

The level of assistance required by CMS receives substantial attention and description in the final rule, including provision of three illustrative examples, which are not intended to be exhaustive, “of how a D-SNP would be required to comply with the assistance obligation in § 422.562(a)(5)(i).” (April 2019 Final Rule Preamble)⁴ Further, the D-SNP must *offer* enrollees assistance with obtaining Medicaid covered services and resolving grievances. The Final Rule provides D-SNPs a framework for guiding them in their assistance of enrollees and the type of assistance that CMS expects D-SNPs to provide. While the examples in the final rule are not exhaustive, as CMS clearly notes, the examples and answers to comments provide enough guidance to D-SNPs that the level of assistance CMS expects of D-SNPs is clear.

D-SNPs are expected to assist enrollees with:

1. Requesting authorization of Medicaid services, as applicable; and
2. Navigating Medicaid appeals and grievances in connection with the enrollee’s own Medicaid coverage. (April 2019 Final Rule Preamble)⁵

D-SNPs with unaligned enrollment are still required to assist enrollees with navigating appeals and grievances, even if the enrollee’s Medicaid coverage is through:

1. Medicaid fee-for-service; and/or
2. Medicaid managed care plan, such as a Medicaid MCO, PIHP, or PAHP. (April 2019 Final Rule Preamble)⁶

Examples of Assistance

In the April 2019 Final Rule CMS provides three examples of when and what type of assistance D-SNPs are expected to provide enrollees with questions regarding unaligned plans. Those three examples, while not intended to be exhaustive, taken directly from the final rule, are listed below:

1. Explaining to an enrollee how to make a request for Medicaid authorization of a service and how to file appeal following an adverse benefit determination, such as:
 - a. Assisting the enrollee in identifying the enrollee’s specific Medicaid managed care plan or fee-for- service point of contact;
 - b. Providing specific instructions for contacting the appropriate agency in a fee-for-service setting or for contacting the enrollee’s Medicaid managed care plan, regardless of whether the Medicaid managed care plan is affiliated with the enrollee’s dual eligible special needs plan; and
 - c. Assisting the enrollee in making contact with the enrollee’s fee-for- service contact or Medicaid managed care plan.

² *Ibid.* (P. 15723)

³ *Ibid.* (P. 15723)

⁴ *Ibid.* (P. 15723)

⁵ *Ibid.* (P. 15723)

⁶ *Ibid.* (P. 15723)

2. Assisting a beneficiary in filing a Medicaid grievance or a Medicaid appeal; and
3. Assisting an enrollee in obtaining documentation to support a request for authorization of Medicaid services or a Medicaid appeal. (§ 422.562 (a)(5)(i)(A) through (C))⁷

CMS also provides additional examples of how D-SNPs can provide assistance to enrollees in the preamble to the final rule. D-SNPs can and should do the following:

1. Advise enrollees to call providers and the questions to ask;
2. Assist enrollees with medical documentation requests;
3. Identify the necessary forms to file;
4. Refer enrollees to an organization with more expertise;
5. Provide enrollees phone numbers or direction to an appropriate website;
6. Assist with technical terms enrollees may not understand;
7. Provide enrollees encouragement and coaching to advocate for themselves, such as:
 - a. talking through the steps the enrollee will take to seek resolution of the issue; and
 - b. role playing to practice how to talk to a representative of the Medicaid agency of Medicaid MCO.

If an enrollee needs a higher level of assistance filing a Medicaid grievance or appeal than the preceding list dictates, the D-SNP should provide that assistance. (April 2019 Final Rule Preamble)⁸

CMS notes “the D-SNP is not obligated to represent the enrollee in Medicaid appeals nor advocate for coverage,” but “can provide specific contact information, explain to enrollees the roles of the Medicaid program, and generally offer different levels of assistance based on the individual’s needs.” (April 2019 Final Rule Preamble)⁹ Alternatively, D-SNPs are not obligated to provide that assistance if an enrollee does not want the D-SNP’s help in resolving the issue. The final rule does not require the D-SNP to represent the enrollee in Medicaid matters, resolve a coverage issue with Medicaid, or represent the enrollee in Medicaid matters.¹⁰ (April 2019 Final Rule Preamble) D-SNPs are expected to assist enrollees in their navigation of the delivery system, in addition to providing coaching and encouragement, but are not the enrollee’s advocate or representative in Medicaid matters with unaligned plans.

Offering Assistance not Dependent on Assistance Request

The final rule requires D-SNPs to provide assistance to enrollees upon request and when it “becomes aware of an enrollee’s need for a Medicaid-covered service.” (§ 422.562 (a)(5)(ii))¹¹ CMS provided a list, which is not exhaustive, of how a D-SNP can become aware of an enrollee’s need for a Medicaid-covered service:

1. During a health risk assessment when an enrollee shows a need for more LTSS than is currently receiving;
2. During a request for coverage of a Medicaid-covered service made to the D-SNP; and
3. During a call to the D-SNP’s customer service line. (April 2019 Final Rule Preamble)¹²

Information Sharing Expectation

The absence of an information sharing infrastructure does not relieve “D-SNPs of their responsibility to coordinate Medicaid benefits they do not directly provide” or prevent the D-SNP from providing

⁷ § 422.562 (a)(5)(i)(A) through (C)

⁸ CMS, HHS, April 2019 Final Rule, Fed. Reg. Volume. 84, No. 73. Tuesday, April 16, 2019. (P. 15726)

⁹ Ibid. (P. 15726)

¹⁰ Ibid. (P. 15726)

¹¹ § 422.562 (a)(5)(ii)

¹² CMS, HHS, April 2019 Final Rule, Fed. Reg. Volume. 84, No. 73. Tuesday, April 16, 2019. (P. 15727)

assistance described in the final rule. (April 2019 Final Rule Preamble)¹³ CMS does not intend to “penalize D-SNPs for not having in place a real-time data sharing exchange with states on D-SNP enrollees’ Medicaid coverage,” but the obligation for coordination of Medicaid services and benefits does rest with the D-SNP. (April 2019 Final Rule Preamble)¹⁴ The D-SNP should therefore “develop mechanisms to coordinate Medicaid coverage and assist with Medicaid appeals and grievance issues.” (April 2019 Final Rule Preamble)¹⁵

Language Assistance

In coordinating Medicaid benefits and services, D-SNPs must remember that Medicare Advantage plans are required “to take reasonable steps to ensure meaningful access by individuals with limited English proficiency” and “take appropriate steps to ensure effective communication with individuals with disabilities, including the provision of auxiliary aids and services.” (April 2019 Final Rule Preamble)¹⁶

Documentation of Compliance

The final rule requires D-SNPs to “provide documentation demonstrating compliance” with assistance requirements upon request from CMS. (§ 422.562 (a)(5)(iv))¹⁷ CMS notes this documentation requirement “does not prescribe certain types of assistance in all cases.” (April 2019 Final Rule Preamble)¹⁸ Compliance with this requirement will be monitored by CMS at a high level, with the goal of providing D-SNPs flexibility on the type of assistance they provide. In detailing their desire to monitor compliance at a high level, CMS notes they will not “require proof that a beneficiary had declined an offer of assistance.” (April 2019 Final Rule Preamble)¹⁹

Conclusion

The April 2019 Final Rule set the parameters for assistance D-SNPs are to provide enrollees regarding requested assistance involving different plan sponsors. The examples in the final rule, while not exhaustive, as CMS notes throughout the preamble, provide D-SNPs with considerable guidance as to what CMS expects of D-SNPs when confronted with these assistance requests. In accordance with the goal of Congress and CMS to further integrate care for individuals dually eligible for Medicare and Medicaid, D-SNPs are expected to provide appropriate and legitimate assistance to enrollees regarding their Medicaid benefits, even when a different plan sponsor is involved.

¹³ Ibid. (P. 15725)

¹⁴ Ibid. (P. 15725)

¹⁵ Ibid. (P. 15725)

¹⁶ Ibid. (P. 15726)

¹⁷ § 422.562 (a)(5)(iv)

¹⁸ CMS, HHS, April 2019 Final Rule, Fed. Reg. Volume. 84, No. 73. Tuesday, April 16, 2019. (P. 15727)

¹⁹ Ibid. (P. 15727)