

# Special Needs ——— ————— Plan Alliance

## ***Correcting Amendment—Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024—Remaining Provisions and Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly (PACE)***

On August 5, 2024, the Centers for Medicare and Medicaid Services (CMS) released a correcting amendment document for CY 2025 Final Rule. CMS addressed three areas applicable to special needs plans (SNPs): 1) network adequacy related to institutional special needs plans (I-SNPs), 2) agent, broker, and other third-party requirements, and 3) special supplemental benefits for the chronically ill (SSBCI).

### **Network Adequacy**

In the correcting amendment, CMS revised the language in **§ 422.116 Network adequacy** to clarify criteria for network adequacy exception. If the follow criteria are met, MA plans may request an exception if:

- A) Certain providers or facilities are not available for the MA plan to meet the network adequacy criteria as shown in the Provider Supply file for the year for a given county and specialty type; and*
- B) The MA plan has contracted with other providers and facilities that may be located beyond the limits in the time and distance criteria, but are currently available and accessible to most enrollees, consistent with the local pattern of care.*

MA plans with I-SNP plans may request an exception if:

- A) The facility-based Institutional-Special Needs Plan (I-SNP) is unable to contract with certain specialty types required under § 422.116(b) because of the way enrollees in facility-based I-SNPs receive care; or*
- B) The facility-based I-SNP provides sufficient and adequate access to basic benefits through additional telehealth benefits (in compliance with § 422.135) when using telehealth providers of the specialties listed in paragraph (d)(5) of this section in place of in-person providers to fulfill network adequacy standards.*

### **Agent, Broker, and other Third-Party Requirements**

In the correcting amendment that pertains to agents and brokers, CMS had two different areas of correction. The first was a typographical error which increased the compensation rate from \$313 to \$363. The change is found on page 30626 in the titled “Table FC-2: Example Agent Broker Compensation Updates CY 2024-2026,” third column, last row.

The second correction was amending **§ 422.2274 Agent, broker, and other third-party requirements**. The new language articulates no contract incentives for plan recommendations. The new amended text states:

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*“Beginning with contract year 2025, ensure that no provision of a contract with an agent, broker, or other TPMO has a direct or indirect effect of creating an incentive that would reasonably be expected to inhibit an agent or broker’s ability to objectively assess and recommend which plan best fits the health care needs of a beneficiary.”*

## **Special Supplemental Benefits for the Chronically Ill (SSBCI)**

CMS provided much more detail about an MA plan’s responsibilities regarding SSBCI eligibility determination, condition documentation, and the SSBCI disclaimers in the correcting amendment.

CMS amended **§ 422.102 Supplemental benefits** to require MA plans offering SSBCI must do all of the following:

- A) Have written policies for determining enrollee eligibility and must document its determination that an enrollee is a chronically ill enrollee based on the definition in paragraph (f)(1)(i) of this section.*
- B) Make information and documentation related to determining enrollee eligibility available to CMS upon request.*
- C) Have and apply written policies based on objective criteria for determining a chronically ill enrollee’s eligibility to receive a particular SSBCI; and
  - (i) Document the written policies specified in paragraph (f)(4)(iii)(A) of this section and the objective criteria on which the written policies are based.**
- D) Document each eligibility determination for an enrollee, whether eligible or ineligible, to receive a specific SSBCI and make this information available to CMS upon request.*
- E) Maintain without modification, as it relates to an SSBCI, evidentiary standards for a specific enrollee to be determined eligible for a particular SSBCI, or the specific objective criteria used by a plan as part of SSBCI eligibility determinations for the full coverage year.*

The SSBCI Disclaimer was updated under **§ 422.2267 Required materials and content**. In the regulation for information CMS deems to be vital to the beneficiary, including information related to enrollment, benefits, health, and rights, CMS may develop materials or content that are either standardized or provided in a model form. Such materials and content are collectively referred to as required. The amended language states “(34) SSBCI disclaimer. This is model content and must be used by MA organizations that offer CMS-approved SSBCI as specified in § 422.102(f).”

In the SSBCI disclaimer, MA organizations must include the information required and MA organizations must do all of the following:

- A) Convey the benefits mentioned are a part of special supplemental benefits.
- B) List the chronic condition(s) the enrollee must have to be eligible for the SSBCI offered by the applicable MA plan.

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- (i) When only one type of SSBCI is mentioned, and the number of condition(s) is five or fewer, then the MA plan must list all condition(s). When only one type of SSBCI is mentioned and there are more than five conditions associated with that SSBCI, then the MA plan must list the top five conditions and convey that there are other eligible conditions not listed.
  - (ii) When multiple types of SSBCI are mentioned, and the number of condition(s) is five or fewer, then the MA plan must list all condition(s), and if relevant, state that these conditions may not apply to all types of SSBCI mentioned. When multiple types of SSBCI are mentioned and there are more than five conditions, then the MA must list the top five conditions for which one or more listed SSBCI is available and convey that there are other eligible conditions not listed.
- C) Convey that even if the enrollee has a listed chronic condition, the enrollee will not necessarily receive the benefit because coverage of the item or service depends on the enrollee being a “chronically ill enrollee” as defined in § 422.102(f)(1)(i)(A) and on the applicable MA plan’s coverage criteria for a specific SSBCI required by § 422.102(f)(4).
- D) Meet the following requirements for the SSBCI disclaimer in ads:
- (i) For television, online, social media, radio, or other voice-based ads, either read the disclaimer at the same pace as, or display the disclaimer in the same font size as, the advertised phone number or other contact information.
  - (ii) For outdoor advertising (as defined in § 422.2260), display the disclaimer in the same font size as the advertised phone number or other contact information.
- (E) Include the SSBCI disclaimer in all marketing and communications materials that mention SSBCI.

For more information and to read the entire correcting document [\*Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024—Remaining Provisions and Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly \(PACE\)\*](#).