

February 13, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

Arnold Ventures welcomes the opportunity to provide comments to the Centers for Medicare and Medicaid Services (CMS) on the “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” proposed rule (CMS-4201-P) that was published in the Federal Register on December 27, 2022.

Arnold Ventures is a philanthropy dedicated to investing in evidence-based policy solutions that maximize opportunity and minimize injustice. Our work within the health care sector is driven by a recognition that the system costs too much and fails to adequately care for the people it seeks to serve. Our work spans a wide range of issues including commercial-sector prices, provider payment incentives, prescription drug prices, clinical trials, Medicare sustainability, and complex care.

First, we want to thank you for the agency’s important work to help improve the Medicare and Medicaid programs, and for the opportunity to provide input. To date, our Medicare Advantage work has focused on increasing the financial sustainability of the program while ensuring that the program has a greater ability to coordinate and organize delivery systems to improve care, especially for the dual-eligible population which faces poor health outcomes despite accounting for high costs.

We focus our comments today on the D-SNP look-alike provision, which has important implications for the dual-eligible population. Ensuring that all dual-eligible individuals have access to a model that integrates their Medicare and Medicaid coverage has potential to improve care and outcomes for this population, and non-integrated models that target dual-eligible individuals undermine this effort.

II. A. Applying D-SNP Look-Alike Requirements to Plan Benefit Package Segments (§§ 422.503(e), 422.504, 422.510 and 422.514)

Background: In the June 2020 final rule, CMS introduced contract limitations for D-SNP look-alikes, which went into effect in plan year 2022. In their analysis of the implementation of these contract limitations, CMS identified several loopholes that allowed D-SNP look-alike plans to persist. CMS proposes to address these loopholes by:

- Extending contract limitations from being determined at the plan level to being determined at the segment level, and, when certain segments of MA plans do not comply with the contract restrictions, allowing CMS to sever those segments, rather than the entire MA plan.
- Beginning in contract year 2024, applying contract limitations not only to new MA plans, but also to existing (i.e., renewing) MA plans.

- Clarifying that their authority to refuse to renew MA contracts that meet D-SNP look-alike criteria allows CMS to terminate MA contracts that meet D-SNP look-alike criteria

Policy Position: We support CMS' efforts to more effectively limit D-SNP look-alikes and urge the agency to consider additional strategies to mitigate these and any other non-integrated models that target the dual-eligible population.

Justification: CMS has made critical efforts to improve care and access for dual-eligible individuals by increasing the standards around D-SNPs. Models like D-SNP look-alikes threaten to undermine this progress by enrolling dual-eligible individuals without delivering the benefits and protections associated with options that integrate Medicare and Medicaid. The proposed amendments to extend D-SNP look-alike contract limitations to segments of MA plans and existing MA plans will certainly bolster CMS' efforts to hinder look-alike plans.

However, we are concerned that even with these amendments, the current policy may fall short of fully restricting look-alikes. A 2019 Medicare Payment Advisory Commission (MedPAC) report, for example, found that plans with 50% dual-eligible enrollment were actively targeting these beneficiaries.¹ Additionally, we have heard anecdotally that to avoid look-alike restrictions, plans shift their dual-eligible enrollees into special needs plans owned by the same parent company, including C-SNPs. Oftentimes, beneficiaries are not aware that they are enrolling in look-alike plans as opposed to integrated options.

To address these potential shortcomings, we urge CMS to couple the proposed amendments to the D-SNP look-alike policy with additional efforts to mitigate the targeting of dual-eligible individuals by non-integrated models, including by (1) reducing the threshold for declining to contract or renew contracts with D-SNP look-alikes from 80 to at least 50 percent; (2) considering the application of the look-alike policy to other types of special needs plans, including C-SNPs, and (3) contemplating requiring Medicare to inform beneficiaries when they are enrolling in a non-integrated model where an integrated model exists.

We would also like to note that Arnold Ventures recently funded research to better understand the behavior of look-alike plans, including in response to the CMS policy, which will be available later this year. We intend to share these results with CMS once available.

Additional Considerations

In addition to raising continued concerns about CMS' application of its D-SNP look-alike policy, we wanted to note our support for CMS' proposals to include more inclusive and descriptive categories of beneficiaries who might require specific accommodations (III. A. 2.), codify provider directories to include accessibility information (III. A. 3.), and ensure that MA quality improvement programs include activities to reduce health and health care disparities (III. A. 5.). Along the same vein, we are supportive of the proposal that MA organizations operating FIDE-SNPs, HIDE-SNPs, or AIPs be required to provide materials to beneficiaries in their primary language, in addition to any Medicaid standards that may exist (VII. D. 3.).

¹ Medicare Payment Advisory Commission (MedPAC). [Report to Congress: Medicare and the Health Care Delivery System](#). June 2019.

Finally, we have seen preliminary analyses from our partners that suggest that the Tukey outlier deletion in the Star Rating calculation (V. I. 2. K.) could lead to disproportionate losses of quality bonus points and rebate dollars among D-SNPs. We encourage CMS to ensure that the proposed solution does not unintentionally result in cuts to the types of plans that the policy indicates it is trying to support.

Conclusion

Arnold Ventures is prepared to assist with any additional information needed. Please contact Mark Miller, Ph.D., Arnold Ventures' Executive Vice President of Health Care, at mmiller@arnoldventures.org or Arielle Mir at amir@arnoldventures.org with any questions. Thank you again for the opportunity to comment and your important work.

Arielle Mir