CENTER FOR CONSUMER ENGAGEMENT in health innovation
A better way to better health. For everyone.

April 6, 2020

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attn: CMS–4190–P
P.O. Box 8013
Baltimore, MD 21244-8013

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)*

Re: Proposed Rule for Medicare Advantage and Part D

The Center for Consumer Engagement in Health Innovation at Community Catalyst respectfully submits the following comments on the proposed rule for Medicare Advantage and Part D.

The Center for Consumer Engagement in Health Innovation (the Center) is a hub devoted to teaching, learning and sharing knowledge to bring the consumer experience to the forefront of health. The Center works directly with consumer advocates to increase the skills and power they have to establish an effective voice at all levels of the health care system. We collaborate with innovative health plans, hospitals and providers to incorporate the consumer experience into the design of their systems of care. We work with state and federal policymakers to spur change that makes the health system more responsive to consumers, particularly those who are most vulnerable. We have been working to improve Medicaid and Medicare for consumers for more than a decade, producing tools for consumer advocates to use in state-based advocacy as well as tools for use by other stakeholders.

Community Catalyst is a national non-profit advocacy organization dedicated to quality affordable health care for all. Since 1998, Community Catalyst has been working to build the consumer and community leadership required to transform the American health system.

We focus our comments on sections that impact Medicare-Medicaid enrollees (dual eligibles).

**Contracting Standards for Dual Eligible Special Needs Plan (D–SNP) Look-Alikes (§ 422.514)**

We greatly appreciate regulatory action to curb the growth of D-SNP look-alike plans. We believe these plans are an impediment to true Medicare-Medicaid integration. They have caused great confusion for beneficiaries who believe they are enrolling in a plan that will coordinate their Medicare and Medicaid benefits even though look-alike plans are not obligated to do so. If these plans remain unchecked, they will continue to undermine the integrity of the D-SNP statutory framework and the goal of integrated care.

While the proposed rule includes important limitations on look-alike plans, we urge CMS to take the following additional steps:

- **Regulations Should Apply to all States**. Do not exempt states that do not have D-SNPs or Medicare-Medicaid Plans (MMPs) – the proposed enrollment requirement should apply to all states. Dual eligibles should not continue to remain in look-alike plans that fail to coordinate their care. Instead, they can enter traditional fee-for-service Medicare, and CMS can encourage these look-alikes to apply as a D-SNP. Additionally, exempting states without D-SNPs or MMPs would potentially leave room for look-alikes to detract from other state efforts to coordinate care for duals, such as managed fee-for-service models. States should be able to exercise oversight and have freedom to set a broader strategy to coordinate care for their dual eligibles without worrying about the proliferation of look-alike products.
- **Stricter Threshold Needed for What Plan Constitutes a Look-Alike**. Set a stricter threshold to limit look-alikes. The proposed 80 percent threshold of dual eligible enrollment does not go far enough to limit the look alike plans. We recommend setting a 50 percent threshold. This lower threshold would be more appropriate given the proportion of duals among the Medicare population more broadly and in light of the MedPAC findings that dual eligibles constitute 10-25 percent of Medicare Advantage (MA) enrollment and in no county exceeds 50 percent. In addition, since CMS will evaluate January enrollment, a lower threshold is necessary because plans have ample time to market during the open enrollment period and the quarterly Low-Income Subsidy (LIS) Special Enrollment Period (SEP), ultimately enrolling a higher percentage of dual eligibles. Instituting a lower threshold would also disincentivize plans from gaming the system by enrolling slightly less than the bar, e.g. enrollment of dual eligibles constitutes 75 percent of a look-alike's membership.

***Crosswalk Proposal***

We appreciate the proposal by CMS to require look-alike plans whose enrollment exceeds the threshold to transition dual eligibles to another Medicare Advantage or Part D plan offered by the same organization. We recommend the following:

- **The Annual Notice of Change (ANOC) Should Include Provider Network Information**. Generally, we support the proposed requirement that the receiving plan is a zero-premium plan as well as the requirement that notices/Annual Notice of Change (ANOC) describe any differences between the look-alike and receiving plan. We encourage taking the ANOC one step further by requiring the notice to indicate any providers known to not be in the receiving plan's network, focusing specifically on PCPs and specialists who the beneficiary has seen twice or more in the past year.
- **Set Standard for Overlapping Networks During Crosswalking**. The proposed rule is silent about requiring significant overlap of network providers between the look-alike and receiving plans. We recommend setting a requirement at 90 percent overlap. Coupled with a robust ANOC, this standard will help smooth the transition for beneficiaries. If the 90 percent provider overlap standard is not met, we recommend that the dual eligible is defaulted, instead, back to traditional Medicare since MA plans, including D-SNPs, can continue to market to duals who are enrolled in their Medicaid plans.
- **Crosswalk Default into D-SNP**. In cases where a crosswalk is occurring and there is a D-SNP offered by the same MA organization, the default crosswalk should be the D-SNP upon proper notice to consumer informing them of other options. Plans should not be able to funnel duals into other MA plans when a more integrated option exists.

- **Include Crosswalk Timing Guidance**. We ask CMS to be mindful of the timing of the crosswalks in order to minimize the number of transitions a consumer experiences over a short period of time. By itself, a crosswalk may cause confusion or, worse, disruptions in care, but the impact on beneficiaries would only be multiplied if the crosswalk happens near to transitions that are happening in states that continue to shift the ways in which dual eligibles receive care, e.g. states moving to mandatory MLTSS.

***Projected and Actual Membership***

CMS proposes to classify a plan as a look-alike if the sponsor projected 80 percent dual membership or if in January membership was actually 80 percent or more. We support CMS analyzing both the projected membership as well as the actual membership. Again, we believe that the dual membership threshold should be 50%, not 80%.

**Requirements for Medicare Communications and Marketing (§§ 422.2260–422.2274; 423.2260– 423.2274)**

***D-SNP Marketing***

We appreciate the requirement that plans' summary of benefits must include Medicaid benefits for D-SNP and the prohibition on MA plans marketing non-D-SNPs as if they were designed for dual eligibles or claiming that they have a relationship with the state Medicaid agency. We believe, however, that more action is needed to protect dual eligibles from nefarious marketing. We recommend:

- Clear requirements for when an agent/broker is disenrolling a beneficiary from an integrated product (D-SNP or MMP). The agent/broker must provide the beneficiary a clear explanation of what they are disenrolling from, notice that they will now be in a non-integrated product and what this change means for their care. Similar requirements should exist for the outbound enrollment verification call, and CMS should require actual contact with the consumer during the call.
- Discouraging D-SNPs from marketing to beneficiaries, except for those enrolled in an affiliated Medicaid plan.

***

We appreciate this opportunity to comment, and we welcome the opportunity to provide additional input on these issues in the future. As always, thank you for your time and attention to these issues.

Sincerely,

Leena Sharma
Project Manager/Senior Policy Analyst
Center for Consumer Engagement in Health Innovation