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Greetings:

Thank you for sharing the proposed Dual Special Needs Plan (“D-SNP”) Policy dated May 1, 2014. We have the following concerns regarding the proposed policy. This list is not exhaustive but identifies the issues we find most significant.

**(1) The proposed policy exacerbates existing marketing concerns.**

Under the proposed policy, D-SNPs operated by sponsors that do not operate Cal MediConnect (“CMC”) plans will be permitted to enroll CMC eligible dual eligibles as long as such individuals are enrolled prior to December 31, 2014. We believe this will lead to increased and overwhelming marketing targeted toward dual eligibles through December 2014. The Cal MediConnect ombudsman has already documented reports of questionable marketing practices – including marketing toward vulnerable populations residing in senior housing and individuals with cognitive impairments. Insurance brokers are not permitted to market Cal MediConnect plans, and therefore, are limited to enrolling dual eligibles into non-CMC D-SNPs in order to collect brokerage fees. The proposed policy invites insurance brokers to employ increasingly aggressive marketing efforts before the end of the year to maximize enrollment into these plans.

**(2) The proposed policy increases the number of dual eligibles who will be enrolled in two different managed care plans.**

The Coordinated Care Initiative (“CCI”) eliminated the policy that required individuals remain in fee-for-service Medi-Cal if they were in a Medicare Advantage plan that did not have a matching Medi-Cal plan. Under the CCI, beneficiaries can now be enrolled in two different managed care plans. Most of the non-CMC D-SNPs do not have a matching Medi-Cal plan. Consequently, individuals enrolled in a non-CMC D-SNP will be in a different Medi-Cal managed

care plan. The number of individuals enrolled in non-CMC D-SNPs will undoubtedly increase over the next several months as these plans increase their efforts to enroll members with the impending December 2014 deadline. While the goal of managed care is to coordinate benefits across the continuum of care, individuals enrolled in two different plans will not benefit from care coordination. Instead, they will have to navigate two different plans with different systems, policies and procedures, and contact information. While not all beneficiaries who are in two different managed care plans will experience fragmentation, the policy increases this possibility. This result conflicts with the goal of the CCI and potentially poses an additional barrier for more beneficiaries to get the right care at the right time.

**(3) Under the policy, D-SNPs that are also operating CMC plans may not remain viable.**

The proposed policy will only permit CMC D-SNPs to enroll beneficiaries who are excluded from Cal MediConnect. There are very few populations that are excluded from participation in Cal MediConnect – most notably, individuals with developmental disabilities. Because enrollment into the CMC D-SNPs will be very small, there are concerns that the CMC D-SNPs will not continue to operate. Besides issues of financial viability, this concern is heightened by CMS policy that disfavors the continuance of Medicare Advantage plans, including D-SNPs, that have small enrollment.<sup>1</sup> This would mean that individuals with developmental disabilities could lose their health plan. This is particularly problematic for CMC D-SNPs that provide increased protections for duals. For example, the Health Plan of San Mateo offers increased benefits in its D-SNP and has a more favorable deeming period than other D-SNPs.

**(4) Notices directed to individuals enrolled in CMC D-SNPs must be tailored.**

The proposed policy will not allow CMC eligible individuals to remain in their current D-SNP if that D-SNP is operated by a CMC plan. Currently, the notices provide three choices: 1. Enroll in Cal MediConnect; 2. Enroll in PACE; or 3. Keep your Medicare the same and enroll in a Medi-Cal plan only. For individuals enrolled in a CMC D-SNP, they cannot keep their Medicare the same because their D-SNP will no longer be able to enroll Cal MediConnect eligible duals. For these individuals, enrolling in a Cal MediConnect plan is the option that will most likely maintain their Medicare the way it is. In reality, however, these individuals will not be able to keep their Medicare the same because there is no guarantee that the same network of providers will be available under Cal MediConnect as were available under the D-SNP. Notices must describe their choices accurately and inform these beneficiaries that they may have to change providers regardless of which choice they make.

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<sup>1</sup> See 2015 Call Letter p. 100, at <http://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Advance2015.pdf>.

**(5) The proposal creates an additional population excluded from enrollment into Cal MediConnect and raises readiness concerns.**

The policy as written excludes dual eligibles who are enrolled in a non-CMC D-SNP by December 31, 2014, from enrollment into Cal MediConnect. Given the fact that to date, multiple excluded populations have received Cal MediConnect notices in error, the addition of yet another excluded population raises a question about the readiness of systems. We know that Medicare Advantage enrollees have already received Cal MediConnect notices even though they are not subject to passive enrollment until later this year. Therefore, we question whether the systems can successfully distinguish between non-CMC D-SNP and CMC-run D-SNP plan beneficiaries. Notices to excluded populations have already created confusion and strained limited resources. Adding yet another population may exacerbate these issues.

In addition, the December 31, 2014, deadline creates problems with the existing enrollment timeline because D-SNP beneficiaries are subject to passive enrollment in January 2014, which means they will begin receiving notices about Cal MediConnect in October. We seriously question whether the systems are prepared to identify individuals who decide to enroll into a non-CMC D-SNP after October 1, 2014, and before January 1, 2014, and to stop sending further Cal MediConnect notices to these individuals. Furthermore, because of the time it takes to process enrollments and share data, it is likely that beneficiaries who enroll into a non-CMC D-SNP will continue to receive notices and CMC plan membership materials, generating further confusion.

Example

For example, Mr. Jones is a dual-eligible beneficiary living in Los Angeles County with a January birthday. He enrolls into a non-CMC D-SNP in late November 2014. However, because he used to be a fee-for-service dual, he received his first Cal MediConnect notice in October and his second in November. We believe the systems are not ready to identify Mr. Jones as someone who is excluded from Cal MediConnect. He will likely receive his 30-day notice in early December and soon thereafter, membership materials from the CMC plan to which he has been assigned. Although he enrolled into a non-CMC D-SNP by the deadline and is therefore excluded from passive enrollment, he will likely find himself in a Cal MediConnect plan on January 1, or at the very least, very confused about his healthcare.

**(6) The proposal complicates the enrollment strategy and is difficult to explain to beneficiaries.**

Existing outreach and education efforts about the CCI have explained to advocates and beneficiaries that D-SNP enrollees are subject to passive enrollment into Cal MediConnect in January 2015. It has already been challenging to explain the current enrollment strategy to these populations. The proposal requires advocates to work with beneficiaries to identify which D-SNP plans they are enrolled in and whether there is a matching CMC plan. Unlike the

general rule that D-SNP enrollees are subject to passive enrollment in January 2015, there is no way to explain the current proposal in a beneficiary-friendly manner. Given the concerns that we have identified above, we believe that changing the enrollment policy with respect to D-SNPs makes the enrollment strategy even more confusing to explain to beneficiaries and brings very little benefit.

**(7) The proposal does not provide sufficient details about a beneficiary's options upon disenrollment.**

The proposal leaves some important questions unanswered, particularly around a beneficiary's options upon disenrollment from Cal MediConnect. For example, the proposal does not address whether a D-SNP beneficiary whose plan has a matching CMC and who enrolls into the CMC plan can disenroll and return back to that D-SNP. A comprehensive proposal should provide sufficient guidance in consideration of the number of possibilities Cal MediConnect creates.

**(8) Shifting the MLTSS (managed long term services and supports) enrollment date for duals in a non-CMC D-SNP to October 2014 is administratively impossible.**

The current proposal and revised enrollment chart change the MLTSS enrollment date for dual eligibles in a non-CMC plan to begin by birth month in October 2014. This means that notices for this population will begin being mailed in July 2014, but again, the deadline for beneficiaries to enroll into a non-CMC D-SNP is December 2014. There is no way for DHCS and its computers to know to whom to send MLTSS notices because the deadline has not occurred for that population to enroll into a non-CMC D-SNP.

Example

To illustrate the proposal's complications, we provide yet another example. Ms. Smith is a dual-eligible beneficiary in fee-for-service Medicare and lives in Los Angeles County with a November birthday. She enrolls into a non-CMC D-SNP in late October 2014. It is unclear when she is subject to passive enrollment for MLTSS. Under the proposal, as a non-CMC DSNP beneficiary with an October birthday, her MLTSS enrollment is slated for October 2014. As such, she should have received her first 90-day notice in July 2014. At that time, however, Ms. Smith had not yet enrolled in her non-CMC D-SNP. Therefore, the question of when she will be enrolled into MLTSS is unclear. To make the situation even more confusing to her and her advocates and family members, it is likely that she was enrolled into a Cal MediConnect plan on November 1 even though she joined a non-CMC D-SNP in late October.

In conclusion, we believe that the current D-SNP proposal policy is counter to the goals of the CCI, fails to be beneficiary-friendly and simple to understand, and is administratively impossible. Thank you for the opportunity to submit our comments.

Sincerely,

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National Senior Citizens Law Center