

Supporting Statement Part A  
Dual Eligible Special Needs Plan Contract with the State Medicaid Agency  
CMS-10796, OMB 0938-1410

## **Background**

Our Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs final rule (May 9, 2022; 87 FR 27704) (CMS-4192-F, RIN 0938-AU30) (hereinafter referred to as the May 2022 final rule) finalizes regulations related to the dual eligible special needs plan's (D-SNP) contract with the State Medicaid agency. We are codifying new pathways through which States can use these contracts to require that certain D-SNPs with exclusively aligned enrollment (a) establish contracts that only include one or more D-SNPs within a State, and (b) integrate materials and notices for enrollees. Additionally, we are expanding the universe of D-SNPs for which the unified appeals and grievance processes apply, requiring an update to the State Medicaid agency contract for the impacted D-SNPs.

The burden for the creation and submission of the D-SNP contract with the State Medicaid agency is currently approved under by OMB under control numbers 0938-0753 (CMS-R-267) and 0938-0935 (CMS-10237) and is being extracted into this new package (CMS-10796; OMB 0938-1410).

As further explained in sections 12 and 15 of this Supporting Statement, we are also updating our currently approved burden estimates under control numbers 0938-0753 (CMS-R-267) and 0938-0935 (CMS-10237) to account for the final rule's changes.

### **A. Justification**

#### **1. Need and Legal Basis**

Special needs plans (SNPs) are Medicare Advantage (MA) plans created by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) that are specifically designed to provide targeted care and limit enrollment to special needs individuals. Under section 1859(b)(6) of the Act, D-SNPs restrict enrollment to individuals entitled to medical assistance under a State plan under title XIX of the Social Security Act (hereinafter referred to as the Act).

Section 1859(f)(3)(D) of the Act and 42 CFR 422.107 established the requirement for D-SNPs to have contracts with State Medicaid agencies in addition to other contracting requirements that that apply to all MA plans.

Section 50311(b) of the Bipartisan Budget Act of 2018 amended section 1859 of the Act to add new requirements for D-SNPs, beginning in 2021, including minimum integration standards, coordination of the delivery of Medicare and Medicaid benefits, and unified appeals and grievance procedures for integrated D-SNPs, the last of which we implemented through

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regulation to apply to certain D-SNPs with exclusively aligned enrollment, termed “applicable integrated plans.” These requirements, along with clarifications to existing regulations, were codified in the “Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Programs of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021” final rule (April 16, 2019; 84 FR 15680) (hereinafter referred to as the April 2019 final rule).<sup>1</sup>

## 2. Information Users

MA organizations with D-SNPs and States use the information in the contract to provide benefits, or arrange for the provision of Medicaid benefits, to which an enrollee is entitled. CMS reviews the D-SNP contract with the State Medicaid agency to ensure that it meets the minimum contract requirements for coordinating Medicaid benefits at § 422.107(c)&(d). CMS uses the attestations and matrices in the appendices of this package to identify the types of D-SNPs an MA organization(s) offers and the location of the contract requirements in the document.

## 3. Improved Information Technology

In the State Medicaid agency contract submission process, technology is used in the collection, processing and storage of the data. Specifically, MA organizations with D-SNPs must submit the signed contract(s) and supporting documentation in appendices A through C through CMS’ Health Plan Management System (HPMS).

The contract submission process has several sections that require the MA organizations with D-SNPs to respond to attestations and matrices based upon the type of D-SNP offered (i.e. fully integrated D-SNP (FIDE SNP), highly integrated D-SNP (HIDE SNP), applicable integrated plan, or coordination-only D-SNP.)

## 4. Duplication of Similar Information

This information collection does not duplicate any other effort and the information cannot be obtained from any other source.

## 5. Small Businesses

There is no significant impact on small businesses.

## 6. Less Frequent Collection

This information collection requires an MA organization with D-SNPs to submit the contract with the State Medicaid agency or a letter of good standing with a previously executed contract from the State annually. This annual contract submission requirement aligns with the annual contract submission required for all MA-PD contracts. We believe a less frequent collection would not provide CMS with enough information to confirm D-SNPs meet CMS requirements.

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<sup>1</sup> See <https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-06822.pdf>.

## 7. Special Circumstances

There are no special circumstances to report, and no statistical methods will be employed. More specifically this collection:

- Does not require respondents to report information to the agency more often than quarterly;
- Does not require respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Does not require respondents to submit more than an original and two copies of any document;
- Does not require respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Is not connected with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- Does not require the use of a statistical data classification that has not been reviewed and approved by OMB;
- Does not include a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Does not require respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

## 8. Federal Register Notice/Outside Consultation

Serving as the 60-day notice, our proposed rule (CMS-4192-P, RIN 0938-AU30) filed for public inspection on January 6, 2022, and will publish in the Federal Register on January 12, 2022 (87 FR 1842). Comments are due on/by March 7, 2022.

The final rule (CMS-4192-F) was published on May 9, 2022 (87 FR 27704) and is effective on June 28, 2022.

## 9. Payments/Gifts to Respondents

While there are no gifts associated with this collection, the State Medicaid Agency Contract with the D-SNP is required for the MA Organization to receive a government contract for a D-SNP.

## 10. Confidentiality

Consistent with Federal government and CMS policies, CMS will protect the confidentiality of the requested proprietary information. Specifically, only information within a submitted D-SNP contract with the State Medicaid agency (or attachments thereto) that constitutes a trade secret, privileged or confidential information, (as such terms are interpreted under the Freedom of Information Act and applicable case law), and is clearly labeled as such by the applicant, and which includes an explanation of how it meets one of the expectations specified in 45 CFR Part 5,

will be protected from release by CMS under 5 U.S.C. 552(b)(4). Information not labeled as trade secret, privileged, confidential or does not include an explanation of why it meets one or more of the Freedom of Information Act exceptions in 45 CFR Part 5 will not be withheld from release under 5 U.S.C. 552(b)(4).

11. Sensitive Questions

No questions of a sensitive nature will be asked.

12. Collection of Information Requirements and Associated Burden Estimates

*12.1 Wage Estimates*

To derive average costs, we used data from the U.S. Bureau of Labor Statistics’ May 2021 National Occupation Employment and Wage Estimates for all salary estimates ([http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)). In this regard, the following table presents BLS’ mean hourly wage, our estimated cost of fringe benefits and overhead (calculated at 100 percent of salary), and our adjusted wage.

National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Overhead (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business Operation Specialists, All Other	13-1199	38.10	38.10	76.20
Lawyer	23-1011	71.17	71.17	142.34
Software Developers	15-1252	58.17	58.17	116.34

*12.2 Requirements and Associated Burden Estimates*

The contract between D-SNP and a State Medicaid agency is a formal written agreement between an MA organization sponsor offering a D-SNP and the State Medicaid agency documenting each entity's roles and responsibilities with regard to dually eligible individuals. The sponsors offering a D-SNP submit the contract with the State Medicaid agency in July prior to each contract year of the D-SNP operation. When applicable, , the D-SNP can submit the existing contract with a letter of good standing from the State.



the annual burden for MA organizations at 13,920 hours (464 D-SNP contracts x 30 hr/contract) at a cost of \$1,060,704 (13,920 hr x \$76.20/hr).

*(C) Additional Burden for the Notification Requirement at § 422.107(d)*

Effective on January 1, 2021, a D-SNP that is not a fully integrated or highly integrated dual eligible special needs plan (FIDE SNP or HIDE SNP) must have in its contract the requirement to notify the State, or the State's designated entity, of hospital and skilled nursing facility admissions for at least one group of high-risk full-benefit dual eligible individuals, identified by the State Medicaid agency, codified at § 422.107(d). CMS does not collect data. For the information burden associated with this requirement, we estimate the time and effort for the following two components:

- I. State Medicaid Agencies to update one-time their systems
- II. Plans to update one-time their systems

We note that 47 State, territory, and District of Columbia Medicaid agencies and the non-FIDE SNP or HIDE SNP D-SNPs within their markets have already made the one-time update to systems to comply with this requirement. We describe the burden estimates for any State that newly offers D-SNPs in its market.

I: State Medicaid Agencies to update one-time their systems

To address differences among the States in available infrastructure, population sizes, and mix of enrollees, the requirement at § 422.107(d) provides broad flexibility to identify the groups for which the State Medicaid agency wishes to be notified and how the notification should take place. These flexibilities include: (1) consideration of certain groups who experience hospital and SNF admissions; (2) protocols and timeframes for the notification; (3) data sharing and automated or manual notifications; and (4) use of a stratified approach over several years starting at a small scale and increasing to a larger scale. The requirement at § 422.107(d) also allows States to determine whether to receive notifications directly from D-SNPs or to require that D-SNPs notify a State designee such as a Medicaid managed care organization, section 1915(c) waiver case management entity, area agency on aging, or some other organization.

Some States, using a rich infrastructure and a well-developed automated system, may fulfill this notification requirement with minimal burden, while States with less developed or no infrastructure or automated systems may incur greater burden. Furthermore, the burden, especially to those States starting on a small scale, may differ significantly from year to year. Because of the flexibilities provided in the requirement, we expect that a State newly allowing D-SNPs in its market will choose strategies that are within their budget and best fit their existing or already-planned capabilities. We expect any State choosing to receive notification itself of such admissions to claim Federal financial participation under Medicaid for that administrative activity.

We estimate that, on average, this work could be accomplished in a month with one software developer/programmer to build an automated system and one business operations specialist to define requirements. We estimate a one-time burden of 320 hours (1 State x 40 hr/week x 4 weeks x 2 FTEs). Since half of the cost will be offset by 50 percent Federal financial participation for Medicaid administrative activities, we estimate an adjusted cost of \$15,403  $[(160 \text{ hr} \times \$116.34/\text{hr}) + (160 \text{ hr} \times \$76.20/\text{hr}) \times 0.50]$ .

## II: Plans to update one-time their systems

As noted in section 12(C)(I), State have broad flexibility in notification options. We also note that MA organizations are already required to have systems that are sufficient to organize, implement, control, and evaluate financial and marketing activities, the furnishing of services, the quality improvement program, and the administrative and management aspects of their organization (§ 422.503(b)(4)(ii)). Independent of the State Medicaid agency's selection of high-risk populations, protocols, and notification schedules, an MA organization's most likely method of sharing this notification will be through the use of an automated system that could identify enrollees with criteria stipulated by the States and issue electronic alerts to specified entities. We believe that this work has only minimal one-time cost, as detailed immediately below. Therefore, we estimate it could be accomplished in a month with one software developer/programmer to update systems and one business operations specialist to define requirements.

The burden will be at the contract, not the plan, level for a subset of D-SNP contracts that are not FIDE SNPs or HIDE SNPs and to which the notification requirements are applicable. Existing D-SNPs met the notification requirement starting in January 1, 2021; therefore, going forward we estimate this burden for new non-FIDE SNP or HIDE SNP D-SNP contracts. Using CY 2022 data, we estimate there are 30 new D-SNP contracts a year with 58 percent (or 17 contracts) being non-FIDE SNP or HIDE SNP D-SNP contracts. Accordingly, we estimate a one-time burden of 5,440 hours (17 contracts x 40 hr x 4 weeks x 2 FTEs) or 320 hours per D-SNP contract, at a cost of \$523,709  $[(2,720 \text{ hr} \times \$116.34/\text{hr}) + (2,720 \text{ hr} \times \$76.20/\text{hr})]$ .

### *(D) Additional Burden for Applicable Integrated Plans (§§ 422.107(c)(9) and 422.561)*

When a D-SNP qualifies as an applicable integrated plan as defined at § 422.561, the D-SNP is required to follow integrated organization determination and grievance procedures under §§ 422.629 – 422.634 and include these requirements in the D-SNP contract with the State Medicaid agency (§ 422.107(c)(9)). We estimate a one-time burden for each new applicable integrated plan to update its policies, procedures, and the D-SNP contract with the State Medicaid agency to reflect the new integrated organization determination and grievance procedures. We anticipate this task would take a business operation specialist 8 hours at \$76.20/hr.

Between CY 2021, the first-year applicable integrated plans were required to follow the procedures under §§ 422.629 – 422.634 and CY 2022, the number of applicable integrated plans increased by 12. We also believe, our changes to the definition of applicable integrated plan in the May 2022 final rule will increase the number of applicable integrated plans by 13 in 2023.

We are using the estimate of an additional 13 D-SNPs per will because we have no way of knowing how many plans will become D-SNPs in future years.

In aggregate, we estimate an annual burden of 104 hours (13 D-SNPs x 8 hr) at a cost of \$7,925 (104 hr x \$76.20/hr).

*(E) Additional Opportunities for Integration through State Medicaid Agency Contracts (§ 422.107(e))*

For States that opt to require the contract requirements at § 422.107(e), States and plans will need to modify the existing State Medicaid agency contract. These modifications will document the D-SNP's responsibility to only enroll dually eligible individuals who receive coverage of Medicaid benefits from the D-SNP, integrate member materials, and request that CMS establish an MA contract limited to D-SNPs within the State.

(I) State Burden

For each State Medicaid agency, it will take a total of 24 hours at \$142.34/hr for State staff to update the State Medicaid agency's contract with the D-SNPs in its market to address the changes in this final rule. This estimate includes the burden to negotiate with the D-SNPs on contract changes and engage with CMS to ensure contract changes meet the requirements that we are finalizing at § 422.107(e).

Based on our experience, we expect that each State Medicaid agency will establish uniform contracting requirements for D-SNPs operating in their market. We are uncertain of the exact number of States that would opt to require these proposed contract changes over the course of the first 3 years (contract years 2024 to 2026). Based on our previous work with States as part of the capitated FAI demonstration and implementing the D-SNP integrations requirements established by the BBA of 2018, we estimate as few as five and as many as 20 States may opt to make these changes in their contracts with D-SNPs and their administration of their programs. Based on the number of States currently collaborating with CMS on Medicare and Medicaid integration and the States likely to transition from Medicare-Medicaid Plan-based to D-SNP-based integrated care approaches, we believe there will be 12 States that implement this rule. We project that States would implement this one-time change during contract year 2025, the first year we anticipate states and plans can implement § 422.107(e).

Section 1903(a)(7) of the Act requires the Federal government to pay half of the States' administrative costs. In aggregate we estimate a one-time burden of 288 hours (12 States x 24 hr/State) at a cost of \$20,497 (288 hr x \$142.34/hr x 0.5). After this first-year one-time requirement is satisfied, and given the uncertainty involved in estimating State behavior, we are estimating zero burden in subsequent years.

(II) MA Organization Burden

To implement new § 422.107(e), we expect each affected D-SNP will take 8 hours at \$142.34/hr for a lawyer to update the contract with the State Medicaid agency to reflect the revised and new provisions in addition to annual contract updates estimated in Section 12(B).



Based on our assumptions of States likely to opt to require the contract changes at § 422.107(e), we estimate between 40 to 80 MA organizations would be impacted. Since we are uncertain of which extreme to use, we use the average, 60 MA organizations. We further expect the updates to be completed in contract year 2025, the first year we anticipate states and plans will implement § 422.107(e). In aggregate we estimate a one-time burden of 480 hours (60 MA organizations x 8 hr) at a cost of \$68,323 (480 hr x \$142.34/hr).

### 12.3 Burden Summary

Table 1: Summary of Annual Burden Estimates

Section in Title 42 of the CFR	Item	Respondents	Total Responses	Time per Response (hours)	Total Time (hours)	Hourly Labor Cost(\$/hr)	Total Cost First Year (\$)	Total Cost Subsequent years (\$)
422.107	Contracting with D-SNPs	47 States	47	40	1,880	142.34	133,800*	133,800*
422.107(d)	Notification - initial software developer	1 States	1	160	160	116.34	9,307*	-
422.107(d)	Notification - initial business operation specialists	1 States	1	160	160	76.20	6,096*	-
422.107(e)	Updating contract	12 States	12	24	288	142.34	20,618*	-
Subtotal (State)		48 States **	61	Varies	2,488	Varies	169,821	133,800
422.107	Reviewing and submitting contract	464 D-SNPs	464	30	13,920	76.20	1,060,704	1,060,704
422.107(d)	Notification - initial software developer	17 D-SNPs	17	160	2,720	116.34	316,445	-
422.107(d)	Notification - initial business operation specialists	17 D-SNPs	17	160	2,720	76.20	207,264	-

Section in Title 42 of the CFR	Item	Respondents	Total Responses	Time per Response (hours)	Total Time (hours)	Hourly Labor Cost(\$/hr)	Total Cost First Year (\$)	Total Cost Subsequent years (\$)
422.107(c)(9) 422.561	Updating contract for unified appeals and grievances	13 D-SNPs	13	8	104	76.20	7,925	7,925
422.107(e)	Updating contract	60 D-SNPs	60	8	480	142.34	68,726	-
Subtotal (Private Sector)		464 D-SNPs	464	<i>Varies</i>	19,944	<i>Varies</i>	1,661,064	1,068,629
<b>TOTAL</b>		<b>512</b>	<b>525</b>	<b><i>Varies</i></b>	<b>22,432</b>	<b><i>Varies</i></b>	<b>1,830,885</b>	<b>1,202,429</b>

\* For State burdens, reflects 50 percent reduction to Federal Matching program.

\*\* Some States or D-SNPs will be a respondent on more than one item.

#### 12.4 Collection of Information Instruments and Instruction/Guidance Documents

Starting with the contract submission for the 2024 plan year, Medicare Advantage sponsors that offer D-SNPs complete and upload the following appendices into HPMS with the completed and signed contract with the State Medicaid Agency. These appendices serve as a checklist for D-SNPs to ensure the required elements are included in the contract with the State Medicaid agency. The appendices also aid Federal reviewers to identify the locations of the required elements in the contract.

Appendix A “D-SNP State Medicaid Agency(ies) Contract(s): Attestations”

Appendix B “D-SNP State Medicaid Agency Contract Matrix”

Appendix C “Special Needs Plan (SNP) Contract Status Review Matrix”.

#### 13. Capital Costs

There are no capital costs.

#### 14. Cost to the Federal Government

Section 1903(a)(7) of the Act requires the Federal government pay a match rate for administrative expenses. Since cost is split between the State Medicaid agency and the Federal government, we split in half the total costs for States to update and sign the contract with D-SNPs, half of which the States incur and half of which the Federal government incurs, associated with administering the Medicaid program. The Federal government’s cost for the D-SNP

contract with the State Medicaid Agency is presented in the Table 2: Federal Government Match Rate for Administrative Expenses Associated with the D-SNP contract with the State Medicaid Agency.

Table 2: Federal Government Match Rate for Administrative Expenses Associated with the D-SNP contract with the State Medicaid Agency

Section in Title 42 of the CFR	Total Federal Cost First Year (\$)	Total Federal Cost Subsequent years (\$)
§422.107	133,800	133,800
§422.107(d)	9,307	0
§422.107(d)	6,096	0
§422.107(e)	20,618	0
<b>TOTAL</b>	<b>169,821</b>	<b>133,800</b>

15. Program/Burden Changes

This information collection request is new but incorporates the burden for the creation of the D-SNP contract with the State Medicaid agency, currently approved under OMB 0938-0753 (CMS-R-267) and the submission of the contract, currently approved under OMB 0938-0935 (CMS-10237). This request updates the burden for existing estimates based on the most recent data on Medicare Advantage organization that offer D-SNPs and wages. Additionally, we added burden estimates for State Medicaid agencies based on experience working with States and D-SNPs to draft contracts. Table 3 below describes burden changes from the current estimates in OMB 0938-0753 (CMS-R-267). This information collection request also incorporates burden for the proposed provisions of the January 2022 proposed rule that impact the D-SNP contract with the State Medicaid agency.

Table 3: Comparison of previous burden under CMS-R-267 and CMS-10237 to new burden estimates under CMS-10796

Section in Title 42 of the CFR	Respondent	CMS-R-267			CMS-10796		
		Original PRA Package	Total Time (hours)	Total Cost (\$)	Reason for Change	Total Time (hours)	Total Cost (\$)
422.107(a)-(c)	States	N/A	0	0	Added to accurately reflect collection	1,880	133,800
422.107(a)-(c)	D-SNPs	CMS-R-267	14,400	1,022,976	Change to wage and respondent numbers	13,920	1,060,704
422.107(d)	States	CMS-R-	4,160	178,360	Change to	320	15,403

		267			wage and respondent numbers		
422.107(d)	D-SNPs	CMS-R-267	43,520	3,731,840	Change to wage and respondent numbers	5,440	523,709
422.107(c)(9) & 422.561	D-SNPs	N/A	0	0	New regulation	104	7,925
422.107(e)	States	N/A	0	0	New regulation	288	20,618
422.107(e)	D-SNPs	N/A	0	0	New regulation	480	68,726
		<b>Original Total</b>	<b>62,080</b>	<b>4,933,176</b>	<b>New Total</b>	<b>22,432</b>	<b>1,830,885</b>

16. Publication/Tabulation Dates

CMS does not intend to publish data related this collection of information.

17. Expiration Date

CMS will display the expiration date and OMB approval number on the CMS website. The appendices will appear on the HPMS for plans to access for the 2024 plan year application.

18. Certification Statement

No exception to any section of OMB Form 83-I is requested.

**B. Collections of Information Employing Statistical Methods**

This collection does not employ statistical methods.