



# Memorandum

TO: NPA Members  
FROM: Charles Fontenot  
DATE: July 12, 2022  
RE: Contract Year (CY) 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192-F)

On May 9, 2022, the Centers for Medicare & Medicaid Services (CMS) published a [final rule](#) in the Federal Register providing for policy and technical changes to the Medicare Advantage (MA) program and the Medicare Part D prescription drug program for CY 2023. Many provisions in this final rule are not applicable to PACE, but there are several that we want to highlight for you, in particular those that we believe PACE organizations (POs) are subject to, in part because they are Part D plan sponsors. We also highlight a new requirement of D-SNPs to have enrollee advisory committees which is based in part on PACE requirements for participant advisory committees.

Provisions of the CY 2023 final rule that we believe are applicable to PACE. These are effective June 28, 2022, and have an applicability date of January 1, 2023:

- 1) CMS has modified [§423.503](#) to expand the bases for denying a Part D plan sponsor's initial or service area expansion application based on its past performance. In addition to considering if the Part D plan sponsor was subject to an intermediate sanction and/or if it failed to maintain a fiscally sound operation during the performance review period, CMS also will consider whether the entity has filed for or is currently under state bankruptcy proceedings and the extent to which it has received compliance actions including notices of non-compliance, warning letters and corrective actions plans. (The entity's Star Ratings history can also lead to an application denial if the entity has been determined to be a "low performer" in both of the two most recent Star Ratings period; however, because POs do not participate in Star Ratings, this would not be the basis for an application denial in PACE.)
- 2) The CY 2023 final rule establishes a new paragraph [\(e\)\(33\) in §423.2267](#) of the Part D rule related to multi-language inserts:

*(33) Multi-language insert (MLI).* This is a standardized communications material which states, "We have free interpreter services to answer any questions you may have about our health or drug plan. To get an interpreter, just call us at [1-xxx-xxx-xxxx]. Someone who speaks [language] can help you. This is a free service." in the following languages: Spanish, Chinese, Tagalog, French, Vietnamese, German, Korean, Russian, Arabic, Italian, Portuguese, French Creole, Polish, Hindi, and Japanese.

(i) Additional languages that meet the 5-percent service area threshold, as required under paragraph (a)(2) of this section, must be added to the MLI used in that service area. A plan may also opt to include in the MLI any additional language that do not meet the 5-percent service area threshold, where it determines that this inclusion would be appropriate.

(ii) The MLI must be provided with all required materials under paragraph (e) of this section.

(iii) The MLI may be included as a part of the required material or as a standalone material in conjunction with the required material.

(iv) When used as a standalone, the MLI may include organization name and logo.

(v) When mailing multiple required materials together, only one MLI is required.

(vi) The MLI may be provided electronically when a required material is provided electronically as permitted under paragraph (d)(2) of this section.

CMS' explanation for requiring the MLI is that the notice and tagline requirements in the Sec. 1557 rule were repealed in 2020 and, at present, there is no explicit notice requirement of Medicare Advantage Organizations (MAOs) or Part D sponsors to inform their enrollees of the availability of interpreter services. Because POs are Part D sponsors (see [§423.4](#)), it is our understanding that this requirement would also apply to POs. The list of materials for which MLIs are required of Part D sponsors is found in [§423.2267\(e\)](#), but a number of the items in that list do not appear to be applicable to POs. Although there is no specific guidance for POs in the final rule regarding the specific materials which must be accompanied by the MLI, at a minimum, we would expect them to include: enrollment agreement; formulary; provider list; disenrollment notice; excluded provider notice; required notices related to service determination requests, appeals and grievances; and other key documentation for which it is important that participants be notified that interpreter services are available.

- 3) In the CY 2023 final rule CMS reinforced that MAOs and Part D plans must post instructions on their websites about how to appoint a representative and include a link to a downloadable version of the CMS Appointment of Representative Form (CMS Form-1696; Control Number 0938–0950). We use this opportunity to remind POs that they have been required to do this consistent with [PACE Marketing Guidelines](#) (click on Guidance).

Although not applicable to PACE, for your information, following is a summary of a new requirement of D-SNPs to have enrollee advisory committees:

CMS is requiring MAOs that offer one or more D-SNPs to establish one or more enrollee advisory committees for individuals enrolled in the D-SNP. In establishing this new requirement of MAOs, CMS references its experience with participant advisory committees in PACE (as well as Medicare-Medicaid plans), indicating that these committees give plans, “a deeper understanding of the communities the plans serve and the challenges and barriers their enrollees face,” and the committees serve as a “convenient mechanism to obtain enrollee input on plan policy and operational matters.”

Although the requirements of POs related to their participant advisory committees are found in [§460.62](#), it may be instructive for POs to take a look at [§422.107\(f\)\(1\)](#) requiring MAOs' enrollee advisory committees to, “include at least a reasonably representative sample of the population enrolled in the dual eligible special needs plan or plans, or other individuals representing those enrollees, and solicit input on, among other topics, ways to improve access to covered services, coordination of services, and health equity for underserved populations.” Although this is not explicitly required of POs, it appears to be worthy of consideration in operationalizing POs' participant advisory committees.

POs may also find it informative to review pp. 27718-27726 of the preamble to the [CY2023 final rule](#) where CMS references POs' experience with participant advisory committee as the basis, at least in part, for requiring MAOs with D-SNPs to have enrollee advisory committees and also responds to comments submitted on the proposed rule requiring MAOs with D-SNPs to have enrollee advisory committees. Again, this is not directly applicable to PACE, but pieces may be instructive and worthy of consideration as POs continuously work to implement their participant advisory committees more successfully. The preamble also references resources that may be helpful to POs as well as MAOs.

If you have questions regarding this information, please contact [Charles Fontenot](#), NPA's Senior Director of Health Plan Management and Reimbursement Policy.