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Blog Series Part 4: CMS Proposed Rule on Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021: Quality Improvement Programs

Article By:

Kathleen M. Stratton

Read Part 1, Part 2, and Part 3.

Quality Improvement Programs

The proposed rule issued November 1, 2018 (the "Proposed Rule") by the Centers for Medicare and Medicaid Services ("CMS") includes two technical changes to 42 C.F.R. Part 422. The first change involves a clarification regarding the accreditation "deeming" standard for Medicare Advantage ("MA") quality improvement programs. The second change, also related to accreditation, simply proposes the deletion of language regarding the soon to be eliminated requirement that MA organizations ("MAOs") conduct quality improvement projects.

1. *Clarification Regarding Accreditation for Quality Improvement Programs*

All MAOs are required to meet program requirements in six specified program areas (quality improvement, antidiscrimination, access to services, confidentiality, advance directives, and provider participation rules). CMS is obligated to periodically evaluate MAOs to confirm that each of these six program requirements has been met. CMS may conduct compliance evaluations on its own or it may delegate this task to an accrediting organization that has been approved by CMS and that uses the same or stricter standards than CMS uses to evaluate compliance. MAOs evaluated by a CMS-approved accrediting body, as opposed to CMS itself, may be "deemed" to have met the six program area requirements.

To meet the first of the six requirements, an MAO must have an ongoing quality improvement program to improve the quality of care provided to its enrollees. When initially enacted, the quality improvement program provisions of the Social Security Act, (42 U.S.C. § 1395w-22(e)) contained two

elements: (1) the general requirement of the need to maintain a quality improvement program, and (2) a data collection, analysis, and reporting requirement. At that time, the accreditation "deeming" provisions stated that if a CMS-approved accrediting organization determined that the MAO met the requirements of paragraphs (1) and (2) (relating to quality improvement programs), then the organization was deemed to have met the CMS quality improvement program requirement.

The Medicare Modernization Act of 2003 amended the quality improvement program requirements by adding a new paragraph (2): "chronic care improvement programs." This amendment necessitated the renumbering of the original paragraph (2): data collection, analysis, and reporting requirements, to paragraph (3). The "deeming" provisions were revised accordingly in the Act, however, this renumbering did not make its way into certain printed and online versions of the Act, making it appear that the data collection, analysis, and reporting requirements of former paragraph (2), now paragraph (3), were not eligible for deemed accreditation. The Proposed Rule will rectify this oversight through revisions to 42 C.F.R. 422.152.

2. *Delete the Reference to Quality Improvement Projects in 42 C.F.R. § 422.156(b)(1)*

This technical change in the Proposed Rule is self-explanatory. As noted above, the regulations set forth at 42 C.F.R § 422.152 delineate the quality improvement requirements for MAOs. One of these requirements currently states that MAOs are required to conduct "quality improvement projects" for their enrollees. CMS eliminated this requirement effective January 1, 2019 (*See,* April 16, 2018 Final Rule, 83 FR 16440). The Proposed Rule states CMS' intent to eliminate any reference to quality improvement projects ("QIPs") from 422.156(b)(1), which currently exempts QIPs from the process for deeming compliance based on accreditation.

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