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CMS Proposes Changes to the Medicare Advantage and Part D Programs for CY 2021 and 2022

Article By:

Christine M. Clements

In an evening email that is sure to ruin the weekend for many, CMS announced on February 5, 2020, that it is proposing changes to the Medicare Advantage and Part D Programs for CY 2021 and 2022. CMS will not issue a Call Letter for CY2021. The unpublished version of the proposed rule is available for inspection, and is scheduled to be published in the Federal Register on February 18, 2020. Comments are April 6, 2020.

The focus of the proposed rule is better coverage, more access and more transparency. According to CMS's announcement, key provisions of the proposed rule are:

- Implement the Cures Act, which allows all Medicare-eligible individuals with end state renal disease to enroll in MA plans beginning January 1, 2021.
- Increase the predictability and stability in the MA and Part D Star Ratings by directly reducing the influence of outliers on cut points. CMS also proposes to further increase measure weights for patient experience/complaints and access measures from 2 to 4.
- Effective date of January 1, 2021, allow Part D sponsors to establish a second, "preferred" specialty tier with lower cost sharing than the current specialty tier; codify the maximum cost sharing for the higher specialty tier; codify the methodology that determines and increases the specialty tier cost threshold; require sponsors to permit tiering exceptions between the two specialty tiers; and permit sponsors to determine which drugs go on either tier subject to the proposed cost threshold.
- By January 1, 2022, require each Part D plan to implement a Beneficiary Real Time Benefit Tool that will allow enrollees to view plan-provided, patient-specific, real-time formulary and benefit information.
- Require Part D plans to disclose the measures they use to evaluate network pharmacy performance to enable CMS to track how plans are measuring and applying pharmacy performance measures. CMS would also be able to report this information publicly to increase transparency on the process and to inform industry in their recent efforts to develop a standard set of pharmacy performance measures.

- Amend the MA medical loss ratio (MLR) regulations to allow MA organizations to include in the MLR numerator as “incurred claims” all amounts that an MA organization pays (including under capitation contracts) for covered services including amounts to paid to individuals or entities that do not meet the definition of “provider” as defined at 42 C.F.R. § 422.2.

- Codify the existing MA network adequacy methodology plans. In addition, CMS proposes to reduce the required percentage of beneficiaries who must reside within the maximum time and distance standards from 90% to 85%. To encourage and account for telehealth providers in contracted networks, the proposed rule would give MA plans receive a 10% credit towards the percentage of beneficiaries that must reside within required time and distance standards when the plan contracts with telehealth providers for Dermatology, Psychiatry, Cardiology, Otolaryngology, and Neurology.

- Codify special election periods (SEPs) that have been established through subregulatory guidance including SEPs for Individuals Affected by a FEMA-Declared Weather-Related Emergency or Major Disaster, the SEP for Employer/Union Group Health Plan elections, and the SEP for Individuals Who Disenroll in Connection with a CMS Sanction. New SEPs are proposed for Individuals Enrolled in a Plan that has been identified by CMS as a Consistent Poor Performer and the SEP for Individuals Enrolled in a Plan Placed in Receivership.

As part of the Patients Over Paperwork initiative to reduce unnecessary burden to increase efficiencies and the beneficiary experience, CMS requests comments on proposals to codify many longstanding policies on the MA and Part D programs that have been previously adopted through sub-regulatory guidance such as the annual Call Letter and other guidance documents. As noted above, CMS is not issuing a Call Letter for CY2021.

The unpublished version of the proposed is nearly 900 pages and our review is ongoing. We will update when we have completed our review.

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