

RECENT DEVELOPMENTS IN PERSONAL CARE AND OTHER HOME AND COMMUNITY BASED SERVICES IN MEDICAID AND MEDICARE ADVANTAGE

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Agenda

- **Background on the Medicare Advantage Program and its Operation**
- **CMS Expansion of Supplemental Benefits Beginning in 2019**
- **Expansion of Non-Medical Special Supplemental Benefits for the Chronically Ill in 2020**
- **Major Compliance Issues in Personal Care Including Requirements for Tracking Devices in Medicaid Beginning in 2020**
- **How These Services Fit Into Medicaid**

BACKGROUND ON MEDICARE ADVANTAGE – ORIGINAL MEDICARE

- **Two types of Medicare Programs**
- **Original Medicare**
 - **Fee for Service**
 - **Generally can choose any provider that chooses to participate**
 - **Parts A and B**
- **Generally only covers home health aides if part of a skilled service and beneficiary is homebound**
- **Otherwise does not cover personal care**
- **Prior to 2019, principal payors of personal care were Medicaid and private duty**

BACKGROUND ON MEDICARE ADVANTAGE

- **Medicare Advantage**
 - Managed care
 - Monthly PMPM Payment
 - Optional for beneficiaries
 - Operated by private insurers consistent with federal rules
 - Can limit networks
- Growing popularity
- Must cover most Part A and Part B services
 - Basic benefits
- Can also cover supplemental benefits
 - E.G. dental, vision, health clubs
 - Can also provide rebates such as lower co-pays

Change in Supplemental Benefits - 2019

- Traditionally three part test
 - Not covered by original Medicare
 - *Primarily Health Related*
 - MA plan must incur a non-zero direct medical cost
- Historically, service *primarily health related* only if the item or service is to prevent, cure, or diminish an illness or injury
 - Not for service that is primarily related to daily maintenance such as home or personal care
- 1919 Call Letter redefines *primarily health related*:
 - Must diagnose, prevent, or treat an illness or injury;
 - Compensate for physical impairments;
 - Act to ameliorate the functional/psychological impact of injuries; or
 - Reduce avoidable emergency and health care utilization
 - CMS Call Letter at <https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Announcement2019.pdf>
- Must also be medically appropriate, *recommended* by a licensed provider as part of a care plan if not directly provided by one, and cannot be solely to induce enrollment

April CMS Letter Further Explaining Expanded Supplemental Benefits

Set out a number of *examples* of supplemental benefits falling under the revised definition of *primarily health related*

- ❖ *Adult day care services*
- ❖ Home-based palliative care
- ❖ *In-home support services*
- ❖ Support for caregivers enrollees
- ❖ Medically-approved non-opioid pain management
- ❖ Stand-alone memory fitness benefit
- ❖ Home and bathroom safety devices & modifications
- ❖ Transportation
- ❖ Over-the-counter benefits

April CMS Letter Further Explaining Expanded Supplemental Benefits (cont'd)

- **“In-home Support Services ...: In-home support services to assist individuals with disabilities and/or medical conditions in performing ADLs and IADLs within the home to compensate for physical impairments, ameliorate the functional/psychological impact of injuries or health conditions, or reduce avoidable emergency and healthcare utilization. Services must be provided by individuals licensed by the state to provide *personal care services*, or in a manner that is otherwise consistent with state requirements.” (Emphasis added.)**
- **“Adult Day Care Services Services provided outside the home such as assistance with ADLs/IADLs, education to support performance of ADLs/IADLs, physical maintenance /rehabilitation activities, and social work services targeted to ameliorate the functional/psychological impact of injuries or health conditions, or reduce avoidable emergency and healthcare utilization. Recreational or social activities or meals that are ancillary to primarily health related services and items may also be provided but the primary purpose must be health related and provided by staff whose qualifications and/or supervision meet state licensing standards. Transportation to and from the adult day care facility may be provided”**

April CMS Letter Further Explaining Expanded Supplemental Benefits (cont'd)

- “This means that now Medicare Advantage beneficiaries will be provided adult day care services, respite care for caregivers, and in-home assistance with activities like bathing and managing medications.” Speech by Seema Verma to Medicare and Prescription Drug Plan Spring Conference, May 9, 2018, describing new optional supplemental benefits.

<https://www.cms.gov/newsroom/fact-sheets/speech-remarks-cms-administrator-seema-verma-medicare-advantage-and-prescription-drug-plan-spring>

Other Guidance and Resources

- Webinar by Heather Kilbourne and Brandy Alston, CMS at Medicare Advantage and Prescription Drug Plan Spring Conference. https://www.cms.gov/Outreach-and-Education/Training/CTEO/Event_Archives.html
- April CMS letter at <https://www.nahc.org/wp-content/uploads/2018/05/HPMS-Memo-Primarily-Health-Related-4-27-18.pdf>
- Medicare Advantage Plans May Soon Offer Personal Care Services by Michael H. Cook <https://www.lilesparker.com/2018/04/10/cms-expands-categories-benefits-medicare-advantage-plan-supplemental-benefits/>
- CMS has Confirmed the Coverage of Personal Care Services by Medicare Advantage Plans Starting 2019 by Michael H. Cook <https://www.lilesparker.com/2018/06/26/cms-confirms-coverage-personal-care-medicare-advantage/>

Other Guidance and Resources – Proposed Rule Incorporating Change

- On February 5, 2020, CMS issued a press release advising that it would not be issuing a Call Letter for 2021, but instead “would codify much of the guidance typically included in the annual Call Letter through the CY 2021 and 2022 MA and Part D Proposed Rule” that was also listed on the Federal Register website that day. The press release also indicated that CMS would “separately issue Part C ... bidding instructions and information previously provided through the Call Letter.”
<https://www.cms.gov/newsroom/fact-sheets/2021-medicare-advantage-and-part-d-advance-notice-part-ii-fact-sheet-0>
- The proposed rule, if adopted would codify the existing requirements in Chapter 4 of the Medicare Managed Care Manual and the expanded definition of “primarily health related and reinterpreted uniformity requirements.”
<https://www.cms.gov/newsroom/fact-sheets/contract-year-2021-and-2022-medicare-advantage-and-part-d-proposed-rule-cms-4190-p-1>
- Proposed Rule, Medicare ... Program() Contract Year 2021 and 2022 Policy and Technical Changes to the Medicare Advantage Program” 85 Fed. Reg. 9002, 9103-4, and 9210 (February 18, 2020)

Changes in Supplemental Benefits for 2020

- **Bipartisan Budget Act of 2018** authorizes MA Plans to provide special supplemental benefits for the chronically ill (“SSBCI”).
 - Need not be primarily health related
 - May be offered non-uniformly under certain conditions
- Plans have broad discretion but the benefit “must have a reasonable expectation of improving or maintaining the health or overall function of the enrollee as it relates to the chronic disease.”
- **Chronically Ill:**
 - One or more comorbid and medically complex chronic conditions that are life threatening or significantly limit the overall health and function of the enrollee;
 - Has a high risk of hospitalization or other adverse health outcomes; and
 - Requires intensive care coordination
- List of chronic conditions for 2020 set out in section 20.1.2 of chapter 16b of Medicare Managed Care Manual and establish technical advisory committee for future.
- Proposed rule for Medicare Advantage Contract Year 2021 and 2022 would allow plans to target additional chronic conditions if adopted.

CHANGES TO SUPPLEMENTAL BENEFITS FOR 2020 (cont'd)

Examples of permitted benefits:

- ❖ Meals (beyond limited basis)
- ❖ Food and produce
- ❖ *Transportation for non-medical needs*
- ❖ Pest control
- ❖ Indoor air quality equipment and services
- ❖ Social needs benefits
- ❖ Complimentary therapies
- ❖ Services supporting self-direction
- ❖ Structural home modifications
- ❖ General supports for living

Guidance and Resources for 2020 Expansion

- **Final Call Letter for 2020.** <https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Announcement2020.pdf>
- **Letter from Katherine Coleman, CMS dated April 24, 2019, “Implementing Supplemental Benefits for Chronically Ill Enrollees.** https://www.cms.gov/Medicare/Health-Plans/HealthPlansGenInfo/Downloads/Supplemental_Benefits_Chronically_III_HP_MS_042419.pdf
- **Contact Year 2019 Medicare Advantage Final Rule, 83 Fed. Reg. 16440, 16481-16483**
- **Contract Year 2021 and 2022 Medicare Advantage and Part D Proposed Rule (CMS-4190-P),** <https://www.cms.gov/newsroom/fact-sheets/contract-year-2021-and-2022-medicare-advantage-and-part-d-proposed-rule-cms-4190-p-1>; 85 Fed. Reg. 9002, 9011 – 9013, 9213 (February 18, 2020)

2019 IMPLEMENTATION BY MA PLANS OF EXPANDED SUPPLEMENTAL BENEFITS

- Anecdotal information indicates that MA plans were experimenting in 2019
 - Proximity of final call letter to date on which MA plans were required to submit bids
- See two reports by Milliman:
 - “LTSS Services in Medicare Advantage Plans – The 2019 market landscape and the challenges ahead.” www.qa.milliman.com/insight/2019/LTSS-services-in-Medicare-Advantage-Plans/
 - “Review of Contract Year 2019 Medicare Advantage Supplemental Health Benefit Offerings.” <https://www.bettermedicarealliance.org/sites/default/files/2018-12/20181207%20Milliman%20-%20MA%202019%20Supplemental%20Benefits%20-%20Final.pdf>

STATUS FOR 2020

- MA Plans submitted their bid packages for 2020 in June 2019
 - CMS has reviewed and approved bid packages
 - Based on Milliman study published in November 2019, appears that a significantly greater number of plans are offering new types of supplemental benefits. See https://www.bettermedicarealliance.org/sites/default/files/2019-11/Review_of_Contract_Year_2020_Medicare_Advantage_Supplemental_Healthcare_Benefit_Offerings.pdf
- Potential advantages to plans of providing new optional supplemental benefits
 - Attract members
 - Can provide supports and services to reduce avoidable medical utilization such as hospitalization or rehospitalization
- Potential detriments or barriers
 - Concern about adverse selection of too many high risk subscribers where risk adjusters don't adequately compensate
 - Competition with other traditional supplemental benefits such as vision and dental care

PRACTICAL ADVICE TO CLIENTS FOR PROVIDING PERSONAL CARE IN MA

- What are the MA plans in their service area?
 - For providers participating in Medicaid managed care, payors may have companion MA plans and may be able to provide contacts
 - Plan Finder on www.Medicare.gov
 - List attached to Milliman article, “Review of Contract Year 2019 Medicare Advantage Supplemental Health Benefit Offerings.”
https://www.bettermedicarealliance.org/sites/default/files/2019-11/Review_of_Contract_Year_2020_Medicare_Advantage_Supplemental_Healthcare_Benefit_Offerings.pdf
- Evidence of Coverages for individual plans should list the benefits that will be provided in covered year
- Be proactive and contact MA Plans covering service area
- Need to show that you are quality provider
- Data showing service is cost effective and attractive to subscribers

PRACTICAL ADVICE FOR PROVIDING PERSONAL CARE IN MA (cont'd)

- **Data from Medicaid plans that cover LTSS may be helpful**
 - **Be mindful that original Medicare does not cover unskilled nursing home care and thus MA plans are not required to do so when determining useful data**
 - **May dictate targeting specific conditions, e.g. post hospitalization hip and knee replacements**
- **Plans may be more interested in providing short term coverage for particular conditions where no family is available**
- **MA plans have substantial leeway in rates that they pay for care**
 - **Clients should be prepared to support requests with data – especially cost-benefit numbers**

COMPLIANCE ISSUES IN PERSONAL CARE SERVICES

- Agencies will need a compliance program to participate
- Larger home health agencies will have program that will need modifications if they have not previously provided home and personal care services
- Many home care agencies that have not provided Medicare home health services will not have compliance programs and will need to develop them
- Significant Risk Areas From Medicaid Experience:
 - Collusion of aides and beneficiaries
 - Kickbacks paid by aides to clients to falsify time records and seek approval for services they would never receive
 - Services billed but never provided
 - Internal notification of when checkers will be visiting beneficiaries
 - Improper eligibility determinations
 - Excluded individuals in ownership
 - Sale of counterfeit home health care aide certificates
 - Incidences of personal theft of beneficiaries belongings, credit cards or other items of value

COMPLIANCE ISSUES IN PERSONAL CARE SERVICES (cont'd)

- Examples of cases:
 - In 2014, more than 20 people in the District of Columbia were arrested in widespread investigation of fraud in DC Medicaid personal/homecare scandal
 - Led to suspension of approximately 70% of DC home care providers
 - See Press Release from US Attorney's Office for the District of Columbia, <https://archives.fbi.gov/archives/washingtondc/press-releases/2014/more-than-20-people-arrested-following-investigations-into-widespread-health-care-fraud-in-d.c.-medicaid-program>
 - In 2018, 12 home care workers were indicted for \$87 million Medicaid fraud in Pennsylvania home care services
 - See article in Home Health Care News, <https://homehealthcarenews.com/2018/11/12-home-health-workers-indicted-for-87-million-medicare-fraud/>
 - See Press Release from US Attorney's Office for Western District of Pennsylvania, <https://www.justice.gov/usao-wdpa/pr/two-more-defendants-plead-guilty-multi-million-dollar-home-health-care-fraud-conspiracy>
 - Two separate guilty pleas by three personal care aides for defrauding DC Medicaid program
 - See Press Releases from US Attorney's Office for the District of Columbia,; <https://www.justice.gov/usao-dc/pr/former-personal-care-aide-pleads-guilty-health-care-fraud-1>; <https://www.justice.gov/usao-dc/pr/two-former-personal-care-aides-sentenced-prison-defrauding-medicare>

COMPLIANCE ISSUES IN PERSONAL CARE SERVICES (cont'd)

- **Examples of OIG Reports:**
 - **Medicaid Fraud Control Units: Investigation and Prosecution of Fraud and Beneficiary Abuse in Medicaid Personal Care Services, HHS OIG Brief, OEI-12-16-00500 (December 2017),** <https://oig.hhs.gov/oei/reports/oei-12-16-00500.pdf>
 - **Recommendations:**
 - Require states to enroll or register PCS attendants as Medicaid providers or assign each attendant a unique identifier
 - Institute qualification requirements for PCS providers
 - Require that PCS claims include the specific date(s) when services were performed and the identity of the rendering PCS providers
 - Issue operational guidance for beneficiary assessments, plans of care, and supervision of attendants
 - Consider whether additional controls are needed to ensure that PCS are allowed under program rules and are provided
 - **OIG Report issued July 2019 on Solutions to Reduce Fraud, Waste, and Abuse in HHS Programs: OIG's Top Recommendations, <https://oig.hhs.gov/reports-and-publications/compendium/files/compendium2019.pdf>**
 - See recommendations ##s 10 and 14
 - See *OIG Calls for Additional Oversight of Home Health, Personal Care Service Providers*, Home Health Care News (July 25, 2019, <https://homehealthcarenews.com/2019/07/oig-calls-for-additional-oversight-of-home-health-personal-care-service-providers/>)

COMPLIANCE ISSUES IN PERSONAL CARE SERVICES (cont'd)

- Major issue is difficulty in tracking aides provision of services
- 20th Century Cures Act requires all State Medicaid Agencies to require electronic visit verification by January 1, 2020 for personal care services reimbursed by Medicaid;
<https://www.colorado.gov/pacific/sites/default/files/CMS%20Additional%20Electronic%20Visit%20Verification%20Guidance-August%202019.pdf>
 - Failure to do so timely will result in incremental reduction of FMAP percentage for these services that will eventually be up to 1%
 - CMS can provide exception for states to delay implementation for up to 1 year if they can demonstrate that they have made good faith effort to comply and have encountered unavoidable delays
 - States must submit requests on form provided by CMS and CMS will respond on whether it approves application within 30 days
- While Act only applies to Medicaid funded services, trackers that are utilized for Medicaid services may also be useful for tracking compliance for MA supplemental services and MA plans may have their own requirements.
- Also, checking LEIE, State exclusion lists as required and conducting background checks should address some of the earlier discussed issues

MANAGED CARE CONTRACTING

- **Clients will need to enter into a contract with each MA plan where they are a participating provider and home care agencies that are not part of larger home health agencies likely will not have experience in the area and will need guidance**
 - Generally form contract
 - May not be tailored to new benefit such as personal care
- **A few examples of contracting issues**
 - Definition of clean claim
 - Confirming eligibility of subscriber for the service
 - Timely payment
 - Dispute resolution for audits and claim denials
 - Payment mechanism
 - Mechanics of claim processing and billing
- **Likely supplemented with on-line manuals**
- **Case management**
- **Clients should consider review by legal counsel familiar with managed care contracting**

MEDICAID AND PERSONAL CARE SERVICES

- Virtually every state covers personal care services either under its State plan as an optional service or under a waiver
 - State plan – home health services (mandatory)
 - State plan – personal care services (optional)
 - Community First Choice (optional)
 - Section 1915(i) (optional)
 - Section 1915(c) (optional)
 - Section 1115 (optional)
- Waivers target populations
 - Individuals with developmental disabilities
 - Seniors
 - Seniors and adults with physical disabilities
 - Adults with physical disabilities
 - Medical fragile technology dependent children
 - Individuals with HIV/AIDS
 - Mental health
 - Traumatic brain injury and spinal cord injury
- *See Medicaid Home and Community-Based Services Enrollment Spending*, M. O'Malley Watts, M. Musumeci, and P. Chidambaram, Kaiser Family Foundation Issue Brief (February 2020) <https://www.kff.org/medicaid/issue-brief/medicaid-home-and-community-based-services-enrollment-and-spending/> and *Key Policy Choices About Medicaid Home and Community –Based Services*, M. Musumeci, M. O'Malley Watts, and P. Chidambaram, Kaiser Family Foundation Issue Brief (February 2020) <https://www.kff.org/report-section/key-state-policy-choices-about-medicare-home-and-community-based-services-issue-brief/>

Questions?



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