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New MA Plan Health Equity Requirements: Are You Ready?

The Centers for Medicare & Medicaid Services (CMS) recently issued a final rule that revises Medicare Advantage (MA) plans along with other federal health program regulations in a variety of traditional areas, but importantly introduced new requirements related to health equity, which may impact an MA plan's reimbursement. Since the regulations became effective on June 5 (which was the submission date for 2024 MA contracts), MA plans have to figure out how to comply between now and January 1 (with some exceptions noted in the final rule).[i] This means MA plans will need to decide whether to create or expand their existing health equity programs or contract with third parties to provide the services. In either case, legal issues, such as privacy of member information, liability exposures and possible contracting issues, will need to be considered.

Background: Advancing Health Equity

The final rule expanded and clarified many of the existing MA health equity regulations that are consistent with the Biden administration's 2021 "Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government." Following the executive order, CMS released its 2022 CMS Strategic Plan with "advancing health equity" as the first pillar and stated the significance of advancing health equity by addressing the health disparities that plague the U.S. health system. CMS defines "health equity" as "the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language[] or other factors that affect access to care and health outcomes."

New Health Equity Index Reward in the Star Ratings System

The final rule provides a tangible "carrot" to address advancing health equity by establishing a health equity index (HEI) reward for the Star Ratings system. The HEI reward is intended to encourage both MA Part C and Part D plans to improve care for enrollees with certain social risk factors (SRFs). CMS and the National Academies of Sciences, Engineering, and Medicine define SRFs as "factors related to health outcomes that are evident before care is provided, are not consequences of the quality of care[] and are not easily modified by health care providers."[ii] The new HEI reward would assist MA plan sponsors in better identifying and addressing disparities in care provided to members with a specific SRF, such as low socioeconomic status, race or access to resources. HEI data will be collected during the 2024 and 2025 measurement periods for the 2027 Star Ratings.[iii]

Ensuring Equitable Access to MA Services

In the current MA regulations, MA plans are required to ensure that services are provided in a culturally competent manner to populations that may require considerations specific to their needs, including those with limited English proficiency or reading skills. However, the final rule further clarifies this broad requirement with a new provision that amends the list of populations to include people:

1. with limited English proficiency or reading skills;
2. of ethnic, cultural, racial or religious minorities;

3. with disabilities;
4. who identify as lesbian, gay, bisexual and other diverse sexual orientations;
5. who identify as transgender, nonbinary and other diverse gender identities or who were born intersex;
6. who live in rural areas and other areas with high levels of deprivation; and
7. who are otherwise adversely affected by persistent poverty or inequality.[iv]

The final rule also notes that the list is not exhaustive and groups are added to provide examples of populations that MA plans should consider for plan development. MA plans should note that the addition of this list is not to be construed to mean that accommodations to ensure cultural competency in the delivery of services are only for enrollees on the revised list; it applies to all enrollees without exception.[v]

Culturally Competent MA Plan Tools and Resources

MA plans will also be required to update their provider directories to include "each provider's cultural and linguistic capabilities, including languages (including American Sign Language (ASL)) offered by the provider or a skilled medical interpreter at the provider's office," which is currently required for provider directory requirements for Medicaid managed care plans.[vi] In the final rule, CMS notes that this requirement will improve access, quality and usability of the provider directories for non-English or limited-English speakers and enrollees who use ASL. While many commenters noted this requirement would increase provider burden and provider abrasion with all MA plans separately requesting the same data from providers, CMS responded that MA plans should use their contracts with providers as leverage to require this information be provided to organizations to populate their provider directories.[vii]

New Quality Improvement Requirement

The final rule also added a requirement for MA plans to incorporate one or more activities in their quality improvement (QI) programs targeted at reducing disparities in health and healthcare. Examples of QI programs include developing and using linguistically and culturally appropriate materials (to distribute to enrollees or use in communicating with enrollees), hiring bilingual staff, community outreach and similar activities.[viii]

Next Steps

The final rule presents a challenge for MA plans to implement the many requirements regarding advances to health equity over the next six months for their 2024 offerings (with some exceptions noted in the final rule preamble) to avoid any financial hit to their Star Ratings. Many MA plans are likely to contract with third parties for some or all services to support the plan's health equity-related member services, since there is little time to build out these services within the plan. That means negotiating contractual arrangements and addressing the privacy requirements associated with data sharing. Day Pitney can advise on agreements to align the party incentives and achieve compliance with the new final rule.

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[i] 88 Fed. Reg. 22120-01. [ii] 88 Fed. Reg. 22174. [iii] 88 Fed. Reg. at 22121. [iv] 88 Fed. Reg. at 22329. [v] 88 Fed. Reg. at 22153. [vi] 42 CFR § 438.10(h)(1)(vii) [vii] 88 Fed. Reg. at 22121. [viii] 88 Fed. Reg. at 22336.

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