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Insights

The Final Direction: New Final Medicaid Rules for State Directed Payments

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Just over a year after the rule was first proposed, and after receiving over 400 comments, the Centers for Medicare and Medicaid Services ("CMS") finalized its managed care access, finance, and quality rule ("Final Rule"). While the rule covers a wide range of managed care topics in its 895 pages,[1] including access standards, medical loss ratio, and in lieu of service and settings (ILOS), this article focuses on the changes to the State Directed Payment ("SDP") requirements for managed care programs.

The Final Rule retained many of the key SDP concepts that we previously summarized in our article covering the proposed rule -- A Direct Proposal: New Proposed Medicaid Rules for State Directed Payments. However, it made a few notable departures from the proposed rule, which we will summarize here.

Timing of Submissions

One change from the proposed rule to the Final Rule relates to the timeframe for submitting documentation for a SDP for which written prior approval by CMS is required. The proposed rule allowed certain SDPs to be submitted at different time periods prior to the end of the rating period, depending on the effective date of the SDP. However, the Final Rule simplifies the submission timeframe to simply require submission of any SDP or amendment before the start date of the SDP or amendment.

Separate Payment Terms

The most notable change regarding SDPs between the proposed rule and the Final Rule relates to the use of separate payment terms for funding the SDP. The proposed rule permitted states to implement SDPs through either: (i) a separate payment term (pre-determined and finite funding pool); or (ii) inclusion in the actuarially sound capitation rate, and required any separate payment term to meet seven additional requirements. While CMS noted its "strong preference" for including SDP funding in the capitation rate process, it still *proposed* allowing the use of separate payment terms. However, in the Final Rule, CMS shifted its "strong preference" to an absolute requirement.

In the Final Rule, CMS requires the final capitation rates for the MCEs to account for *all SDPs* in the base data and eliminates all references to separate payment terms completely, thereby prohibiting all SDPs from being implemented via a separate payment term. To further nail down its distaste for SDPs, CMS adds in the Final Rule that "[t]he State cannot withhold a portion of the capitation rate to pay the MCO, PIHP, or PAHP separately for a State directed payment nor require an MCO, PIHP, or PAHP to retain a portion of the capitation rate separately to comply with a State directed payment." The impetus for this change is CMS' ongoing concern (and seemingly enhanced concern as a result of the comments it received) that using separate payment terms erodes the risk-based nature of payment to managed care plans and the fiscal

integrity of Medicaid managed care.

CMS notes in the preamble to the Final Rule that 41.5% of all SDPs that CMS reviewed and approved from May 2016 through March 2022 utilized a separate payment term, with the percentage increasing each year. Therefore, the new prohibition on the use of separate payment terms for SDPs in the Final Rule will result in a substantial undertaking for states and their actuaries to redesign their SDPs over the next three years as the compliance date approaches.

Effective Dates

The effective dates for the SDP portions of the final rule vary depending on the provision, ranging from:

(a) the effective date of the final rule; and

(b) the first rating period beginning on or after (i) the effective date, (ii) two, three, or four years after the effective date, or (iii) January 1, 2028.

A summary of the effective date for each provision is available in this table.

For questions regarding the Final Rule and how States will implement changes to their SDP programs for compliance with the Final Rule please contact Meghan M. Linvill McNab or Grant M. Achenbach.

[1]In the Unpublished Version.