Policy Brief

August 24, 2018

Step Therapy Allowed in Medicare Advantage

Beginning in January 2019, CMS will permit Medicare Advantage (MA) plans to use step therapy to control rising costs for Part B drugs, those administered in a doctor's office. Physicians would be required to first try the least expensive drugs before moving on to their more expensive counterparts. This comes as a sharp departure from CMS' 2012 guidance, which disallowed the practice in MA. Calling the practice the "failing first" model, many critics worry that it undermines doctors' professional autonomy, decreases patients' access and exposes them to unnecessary risk.

By only allowing patients to step up to more costly treatments after they have tried all the cheaper alternatives, CMS hopes to promote better clinical decisions, increase competition and improve the quality of care. Critics, however, don't see it that way. They worry that its introduction may be harmful to patients and largely ineffective.

Private insurers have been using step therapy for years to exercise control over costs. Although using step therapy has helped to keep claim amounts down, at times its aggressive application has made things difficult for some of the sickest patients—especially those needing innovative treatments. Independent policy analysts and CMS do not yet agree on the amount of projected savings, but all seem to believe that the move will at least reduce spending in certain drug classes. Measures like exempting existing prescriptions and ensuring that the cheaper options truly offer equal outcomes can help to protect patients from unintentional negative effects.

Increasing Risk for MSSP Participants

Recent findings about the Medicare Shared Savings Program's (MSSP) increased spending has spurred CMS to revamp the model and put more pressure on participants. In a proposed rule, the traditional three track Accountable Care Organization (ACO) model is being replaced by two tracks, Basic and Enhanced. Under the revised model, the amount of time ACOs can participate in the program without downside risk would be reduced from six to two years, increasing the amount of financial risk on providers. This reflects HHS Secretary Azar's more aggressive approach to disrupt health care and reduce Medicare costs. Below are the proposed changes and how that may affect the future of value-based care.

Between 2013 and 2016, MSSP increased Medicare spending by $384 million, failing to achieve the estimated $1.7 billion in net savings to the federal government. CMS is attributing the difference of over $2 billion to the fact that 82% of MSSP participants are in upside risk only models. While the amount of time providers can participate with no downside risk may generate more savings, CMS predicts that more ACOs could voluntarily drop out. Previously, HHS Secretary Alex Azar indicated that if voluntary participation in Alternative Payment Models goes down, he is not against making participation mandatory.

The rule includes other measures that would provide more flexibility for ACOs and encourage participation. The Skilled Nursing Facility Three-Day Stay waiver is being extended to ACOs in both the Basic and Enhanced tracks to allow for better engagement of beneficiaries and coordination of care across settings. Additionally, ACOs would be able to receive payment for telehealth services regardless of the patient's location. It is yet to be seen if this increased flexibility will encourage providers to continue in the MSSP.

Case Against the ACA Could Disrupt Kavanaugh's Confirmation

A case filed in Texas against the Affordable Care Act (ACA) could impact the appointment of Supreme Court nominee Brett Kavanaugh. Oral arguments on the case have been rescheduled for September 5th, just one day after the Senate Judiciary Committee is slated to begin the Supreme Court confirmation hearings. Some experts argue that if the Texas case makes it to the Supreme Court, Kavanaugh will join other conservative justices to strip protections provided under the ACA. Democrats that oppose Kavanaugh's nomination may rally to make this lawsuit a crucial factor in the confirmation and the mid-term elections. Read below for the details on the rationale behind the case.

In the Texas case, 20 Republican state attorneys general are seeking to halt enforcement of the federal health care law. The attorneys general argue that three key clauses should be eliminated: (1) the individual mandate (2) the guaranteed-issue (protection against denial of coverage based on health status, and (3) the community-rating provisions (protection against charging sick people more for insurance). This rationale is based on a 2012 argument by the Obama Administration that the three ACA provisions are inseparable and a later ruling by Chief Justice John Roberts, which upheld the legality of the tax.

The Democratic attorneys general defending the ACA in the Texas case argue that the Court should consider the Congressional intent of the law. When Congress eliminated the individual mandate, they left the insurance protections of the ACA in place. Therefore, the attorneys contend that Congress intended to eliminate only the penalty while maintaining all the other insurance reforms within the ACA.

Seema Verma Testifies in the Senate

On Tuesday, CMS Administrator Seema Verma testified in the Senate and answered questions regarding a variety of policy issues such as Medicaid, work requirements and the ACA coverage provisions. Below were the key issues covered and highlights from Verma's testimony.

Pre-existing Conditions Under the ACA

In response to a question by Senator Claire McCaskill (D-Mo.), Verma said CMS will protect the preexisting conditions under the ACA. She added that if the Texas lawsuit finds the preexisting conditions unconstitutional, CMS will work with Congress to make sure people receive the appropriate protections.

Medicaid

Verma noted that CMS wants to "reset the balance" of the federal-state program. That reset includes providing states with more flexibility to create programs that work for them, stronger accountability and enhanced program integrity.

Medicaid Program Integrity

Verma stated that CMS' actuaries estimate that by 2026, one in every five dollars will be spent in health care. She added that "until we change the dynamic and structure of the Medicaid program, from being an open-ended entitlement program to one where states are responsible for a fixed-amount of dollars, we are always going to have these issues around program integrity."

Short-Term Insurance Plans

Responding to concerns regarding short-term insurance plans and their narrow scope, Verma stated that these plans are an alternative to give Americans more affordable choices when seeking insurance. She said the Trump Administration has strengthened consumer protections so people understand what they are signing up for.

Opioids

When asked why the Administration didn't support negotiation for naloxone in Medicare Part D, similarly to how it is done by the VA to lower prices, Verma stated that this would result in a limited drug formulary for seniors. She added, "We want to make sure that Part D plans have every negotiation tool at their disposal…but I want to make sure seniors have access to a variety of medications."

Work Requirements

Sen. Doug Jones (D-Ala.) asked about how CMS was going to tackle work requirements like the one proposed by Alabama to ensure continued access. Verma stated, "We know that the old way hasn't work and this is about trying something different…in the case of Alabama we have asked: What is the transition? Is there a pathway? We don't want a subsidy cliff." Verma also noted that there are several ways individuals can meet work requirements, such as community engagement and job training.

Medicare Wage Index

Verma expressed interest in revising the Medicare wage index methodology to protect rural hospitals. She stated, "I'm concerned when there are these disparities…When you're a hospital in a rural area they're still paying the same price for equipment…and this is something we are going to be looking at next year."

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