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Centers for Medicare & Medicaid Services
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MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: May 13, 2020
TO: Medicare Advantage Organizations
FROM: Kathryn A. Coleman
Director
SUBJECT: Updated Guidance for Medicare Advantage Organizations

The purpose of this document is to respond to questions related to the following HPMS Memos:

- HPMS Memo titled: “Information Related to Coronavirus Disease 2019 - COVID-19” issued April 21, 2020 (*revision of March 10, 2020 HPMS Memo*).
 - HPMS Memo titled: “Updated Guidance for Medicare Advantage Organizations” issued April 24, 2020 to update information related to its previously issued April 21st guidance, “Information Related to Coronavirus Disease 2019 - COVID-19.”
1. **Q. Are there time restrictions for the permissive actions related to additional benefits (e.g., through the emergency period, through the rest of the calendar year, for a plan-defined period of time, or some other pre-determined time period)?**
 - A. As indicated in the April 21, 2020 HPMS Memo, COVID-19 permissive actions may be provided during a federal or state public health emergency.
 2. **Q. If a plan provides a Part C over the counter (OTC) supplemental benefit that was in the approved CY 2020 bid, can we increase the benefit allowance as a benefit enhancement?**
 - A. Yes, this is within the scope of the April 21, 2020 HPMS Memo during a public health emergency (including CY 2021, if applicable). We note that permissive actions may be implemented more than one time (e.g., increasing the benefit allowance during the course of the contract year).
 3. **Q. If an approved CY 2020 bid does not include an existing Part C OTC supplemental benefit, can we add it as a benefit enhancement?**
 - A. Yes, this is within the scope of the April 21, 2020 HPMS Memo during a public health emergency (including CY 2021, if applicable). We note that permissive actions may be implemented more than one time (e.g., increasing the benefit allowance during the course of the contract year).

4. Q. Can a plan add a new benefit facilitated through a debit card that would allow enrollees to use a dollar amount for specific primarily health related services (e.g., copays, OTC drugs, eyeglasses)? For non-primarily health related services (e.g., food and produce, non-medical transportation)?

A. Yes, for primarily health related items and services, plans may offer a group of supplemental benefits together with a single maximum plan benefit amount or allow the enrollee to pick one or more benefits from a list of supplemental benefits. A supplemental benefit must be provided uniformly to all plan enrollees or tied to health status or disease state in a manner that ensures that similarly situated individuals are treated uniformly based on chronic condition or health status (e.g., COVID-19 related diagnoses, quarantine, or stay at home order).

Non-primarily health related items and services may be provided as special supplemental benefits for the chronically ill (SSBCI), but to only enrollees who meet the definition of “chronically ill enrollee” in the statute (and implementing regulations once adopted). SSBCI may only be offered to the chronically ill enrollee if the benefit has a reasonable expectation of improving or maintaining the health or overall function of the chronically ill enrollee.

Therefore, a debit card reimbursement mechanism that would facilitate coverage or payment of both the primarily health related items *and* the non-primarily health-related items can only be offered and provided to chronically ill enrollees, while a debit card reimbursement mechanism that would facilitate coverage or payment of only the primarily health related items can be offered and provided to enrollees uniformly. The April 21, 2020 HPMS Memo would permit an MA organization to add a mid-year benefit enhancement that includes coverage of these benefits as described here using the debit card reimbursement mechanism. Refer to the April 21, 2020 HPMS Memo for more details about the timeframe for this flexibility.

5. Q. Can a balance on a plan debit card be carried into CY 2021 as part of the COVID-19 permissive actions?

A. No. Benefit enhancements (e.g., debit card balances) cannot extend beyond a contract year as part of the COVID-19 permissive actions.

6. Q. Can we provide a smartphone/tablet or a cellular data plan to MA enrollees as a primarily health related supplemental benefit during the public health emergency and/or for the entire plan year? Can we provide a smart phone/tablet or a cellular data plan as a special supplemental benefit for the chronically ill (SSBCI) during the public health emergency and/or for the entire plan year?

A. MA organizations may currently provide smartphones and/or tablets as a supplemental benefit for primarily health related purposes under remote access technology services. Per the 2019 Call Letter and April 2018 HPMS memo, a supplemental benefit is not primarily health related if it is an item or service that is solely or primarily used for cosmetic, comfort, general use, or social determinant purposes. Therefore, smartphones or tablets must only be used for primarily health related purposes, such as when the

device is locked except for remote monitoring or to enable engagement with healthcare providers.

A cellular data plan can be provided if it is limited to only health related activities (e.g., when the device is locked except for remote monitoring or to enable engagement with healthcare providers). A cellular data plan without limitations can be provided as a non-primarily health related SSBCI to a chronically ill enrollee because SSBCI can include benefits that are not primarily health related so long as the cellular data plan has a reasonable expectation of improving or maintaining the health or overall function of the chronically ill enrollee.

These benefits, within the limits described, may be provided as a COVID-19 permissive action for the duration of the public health emergency (as described in the April 21, 2020 HPMS memo) and/or be included in a bid submission for the entire contract year.

7. Q. Can an MA organization waive the plan premium for an enrollee as a permissive action?

A. Yes, this is within the scope of the April 21, 2020 HPMS Memo if offered to all plan enrollees uniformly. CMS clarifies that this flexibility is limited to when the waiver or reduction in the MA plan's premium can be tied to the COVID-19 outbreak. CMS consulted with the HHS Office of Inspector General (OIG) and HHS OIG advised that should an MA organization choose to voluntarily waive or reduce enrollee cost-sharing or plan premium, as approved by CMS in the HPMS memo, such waivers or reductions would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR 1001.952(l).

CMS also reminds plans of their ability to apply flexible policies to members who are unable to pay plan premiums. Plans are not required under existing regulations to disenroll members due to failure to pay plan premiums; however, plans must apply the same policy consistently for all enrollees of the applicable plan. For those plans that have elected a policy to disenroll for non-payment of premium, we encourage you to consider changing the policy so that the plan would not disenroll members for non-payment of premium. If a plan chooses not to eliminate its disenrollment policy, we encourage the plan to increase the mandatory grace period (which must be at least two months) to a longer period of time. Plans may make these types of changes mid-year as long as the change is applied to everyone in the plan and the plan notifies its CMS account manager. This type of change in disenrollment policy may not be limited to specific groups of enrollees but must generally be available to all enrollees in the plan. Detailed information regarding disenrollment and non-payment of premiums requirements are at § 422.74(b)(1)(i) and section 50.3.1 of Chapter 2 of the Medicare Managed Care Manual for MA and at § 423.44(b)(1)(i) and section 50.3.1 of Chapter 3 of the Medicare Prescription Drug Benefit Manual for Part D.

8. Q. Can an MA organization provide a Rewards and Incentive Program as a permissive action related to the outbreak of COVID-19?

A. Yes, in addition to the permissive actions outlined in the April 21, 2020 HPMS Memo, plans may implement a Rewards and Incentive Program for enrollees in connection with the COVID-19 outbreak. Rewards and/or incentives may not be offered in the form of cash or monetary rebates, including reduced cost-sharing or premiums. Otherwise, MA organizations have considerable flexibility with regard to what may be offered as a reward or incentive. For example, gift cards are a permissible form of reward or incentive as long as they are not redeemable for cash and meet the applicable limits in the regulation. MA plans are encouraged to offer enrollees a choice of gift cards from which to choose in order to account for differences in enrollees' preferences and accessibility of retailers. For additional information, please refer to the Medicare Managed Care Manual, Chapter 4, Section 100.5 – Permissible Rewards and Incentives.