



2020

# CMS Flexibilities to Fight COVID-19 Medicare Advantage and Part D Plans

MTELEHEALTH

## Medicare Advantage and Part D Plans: CMS Flexibilities to Fight COVID-19

Since the beginning of the COVID-19 Public Health Emergency, the Trump Administration has issued an unprecedented array of temporary regulatory waivers and new rules to equip the American healthcare system with maximum flexibility to respond to the 2019 Novel Coronavirus (COVID-19) pandemic. These temporary changes will apply immediately across the entire U.S. healthcare system for the duration of the emergency declaration. The goals of these actions are to 1) expand the healthcare system workforce by removing barriers for physicians, nurses, and other clinicians to be readily hired from the community or from other states; 2) ensure that local hospitals and health systems have the capacity to handle a potential surge of COVID-19 patients through temporary expansion sites (also known as CMS Hospital Without Walls); 3) increase access to telehealth in Medicare to ensure patients have access to physicians and other clinicians while keeping patients safe at home; 4) expand in-place testing to allow for more testing at home or in community based settings; and 5) put Patients Over Paperwork to give temporary relief from many paperwork, reporting and audit requirements so providers, health care facilities, Medicare Advantage and Part D plans, and States can focus on providing needed care to Medicare and Medicaid beneficiaries affected by COVID-19.

### ***Patients Over Paperwork***

- ***Flexibility to Provide Expanded Benefits:*** CMS announced in guidance it is exercising enforcement discretion to allow Medicare Advantage plans to expand telehealth services and other mid-year benefit enhancements beyond those included in their approved 2020 benefits when such mid-year benefit enhancements are provided in connection with the COVID-19 outbreak, are beneficial to enrollees, and are provided uniformly to all similarly situated enrollees.
- ***Prior Authorization for Part D Drugs:*** Part D Sponsors may waive prior authorization requirements at any time that they otherwise would apply to Part D drugs used to treat or prevent COVID-19, if or when such drugs are identified. Part D Sponsors can also choose to waive or relax PA requirements at any time for other formulary drugs in order to facilitate access with less burden on beneficiaries, plans, and providers.
- ***Part D “Refill-Too-Soon” Edits and Maximum Day Supply:*** Consistent with section 3714 of the CARES Act, during the public health emergency for COVID-19, Part D sponsors must permit enrollees to obtain the total supply prescribed for a covered Part D drug up to a 90-day supply in one fill or refill if requested by the enrollee, prior authorization or step therapy requirements have been satisfied, and no safety edits otherwise limit the quantity or days’ supply. Part D plan also sponsors must relax their “refill-too-soon” edits. Part D sponsors continue to have operational discretion as to how these edits are relaxed as long as access to Part D drugs is provided at the point of sale. For purposes of section 3714 of the CARES Act, relaxed refill-too-soon edits are safety edits, and Part D sponsors must not permit enrollees to obtain a single fill or refill that is inconsistent with a safety edit.
- ***Home or Mail Delivery of Part D Drugs:*** In situations when a disaster or emergency makes it difficult for enrollees to get to a retail pharmacy, or enrollees are actually prohibited from going to a retail pharmacy (e.g., in a quarantine situation), Part D sponsors are permitted to voluntarily relax any plan-imposed policies that may discourage certain methods of delivery, such as mail or home delivery, for retail pharmacies that choose to offer these delivery services in these instances.

- **Audit Reviews:** CMS is reprioritizing scheduled program audits and contract-level Risk Adjustment Data Validation audits for MA organizations, Part D sponsors, Medicare-Medicaid Plans, and Programs of All-Inclusive Care for the Elderly organizations. Reprioritizing these audit activities will allow providers, CMS and the organizations to focus on patient care.

### ***COVID-19 Diagnostic Testing***

*Coverage of Testing and Testing-Related Services for COVID-19:* As a result of the Families First Coronavirus Response Act and the CARES Act, Medicare Advantage Organizations are not permitted to charge cost sharing for clinical laboratory tests for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19, the administration of such tests, and specified COVID-19 testing-related services during the period March 18, 2020 through the end of the public health emergency declared by the Secretary under section 319 of the Public Health Service Act. In addition, Medicare Advantage organizations may not impose any prior authorization or other utilization management requirements with respect to the coverage of COVID diagnostic tests, its administration and specified testing-related services furnished on or after March 18, 2020 and during the applicable emergency period.

### ***Medicare Advantage (Part C) and Part D Star Ratings: 2021 Star Ratings Data Collection***

CMS is committed to allowing health plans, providers, and physician offices to focus on caring for Medicare beneficiaries during this public health emergency and not put individuals at risk by requiring travel or collection of data in offices that may be overwhelmed by patients needing care. In light of the public safety issues in continuing to require the collection, validation and submission of data for the 2019 measurement year, the first Interim Final rule removed the requirement for Medicare health plans to submit Healthcare Effectiveness Data and Information Set (HEDIS) 2020 data covering the 2019 measurement year for the Medicare program. Medicare health plans can use any HEDIS data that they have collected for their internal quality improvement efforts.

CMS is removing the requirement for submission of 2020 Consumer Assessment of Healthcare Providers & Systems (CAHPS) survey data for Medicare health and drug plans for similar concerns about the potential associated with activities to collect and submit the survey data. Both Part C and D plans can use any CAHPS survey data collected for their internal quality improvement efforts.

This year's Health Outcomes Survey, administered by NCQA in partnership with CMS as a component of HEDIS data collection, was scheduled to be from April through July 2020. This survey administration has been postponed to late summer, and CMS will continue to monitor the situation to see if any further adjustments are needed.

### ***Medicare Advantage (Part C) and Part D Star Ratings: 2021 Star Ratings Calculations***

In addition to modifying the 2020 data submission requirements for HEDIS and CAHPS surveys, CMS is taking the following action with respect to 2021 Star Rating calculations:

- CMS will use last year's HEDIS measures scores and ratings from the 2020 Star Ratings (based on care delivered in 2018) for the 2021 Star Ratings. Similarly, CMS will use the CAHPS measures data scores and ratings (from the 2020 measure-level Star Ratings) for the 2021 Star Ratings.
- The measurement period and data for all other measures, where there was not a health and safety risk from the COVID-19 outbreak in collecting the data, will not change from what was finalized in the April 2018 final rule, unless:

- » In the event that the COVID-19 outbreak prevents CMS from having validated data or results in systemic data integrity issues for any other measures, we will replace the data about 2019 for which there are data quality issues due to the COVID-19 outbreak with the measure-level Star Rating and score from the 2020 Star Ratings.
- » In the event that CMS's functions become focused on only continued performance of essential Agency functions and the Agency and/or its contractors do not have the ability to calculate the 2021 Star Ratings, the 2020 Star Ratings received for contract year 2020 would be used for the ratings for 2021.
- For newer contracts where the 2021 Star Ratings would be the first year that they would receive a Star Rating, we will treat them as new for an additional year since CMS would not have enough data to assign a rating.
- For the HEDIS and CAHPS measures that are part of the Part C and D improvement measures, CMS will use the measure-level improvement change score from the prior year and for all other measures will use the current measure-level improvement change score as has historically been done.

#### *Medicare Advantage (Part C) and Part D Star Ratings: 2022 Star Ratings Calculations*

For 2022 Star Ratings, CMS expects Medicare Advantage contracts to submit HEDIS data in June 2021, and Medicare Advantage and Prescription Drug Plan (Part D) contracts to administer the CAHPS survey in 2021 as usual so there is not a concern about data collection for the 2020 performance period. However, to address concerns about overall performance in 2020, we are changing the applicability date of the guardrails policy from January 1, 2020 to January 1, 2021, delaying implementation of the 5-percentage point cap so that cut points for the 2022 Star Ratings can change by more than 5 percentage points if national performance declines overall as a result of the outbreak.

CMS will calculate the Part C and D improvement measure scores for the 2022 Star Ratings as codified but recognizes that the COVID-19 outbreak may result in a decline in industry performance, therefore expanding the “hold harmless rule” to include all contracts at the overall and summary rating levels.

#### ***Medicare appeals in Fee for Service, Medicare Advantage (MA) and Part D***

- CMS is allowing Medicare Administrative Contractors (MACs) and Qualified Independent Contractor (QICs) in the FFS program 42 CFR 405.942 and 42 CFR 405.962 and MA and Part D plans, as well as the Part C and Part D Independent Review Entity (IREs), 42 CFR 562, 42 CFR 423.562, 42 CFR 422.582 and 42 CFR 423.582 to allow extensions to file an appeal;
- CMS is allowing MACs and QICs in the FFS program 42 CFR 405.950 and 42 CFR 405.966 and the Part C and Part D IREs to waive requirements for timeliness for requests for additional information to adjudicate appeals; MA plans may extend the timeframe to adjudicate organization determinations and reconsiderations for medical items and services (but not Part B drugs) by up to 14 calendar days if: the enrollee requests the extension; the extension is justified and in the enrollee's interest due to the need for additional medical evidence from a noncontract provider that may change an MA organization's decision to deny an item or service; or, the extension is justified due to extraordinary, exigent, or other non-routine circumstances and is in the enrollee's interest 42 CFR § 422.568(b)(1)(i), § 422.572(b)(1) and § 422.590(f)(1);
- CMS is allowing MACs and QICs in the FFS program 42 C.F.R 405.910 and MA and Part D plans, as well as the Part C and Part D IREs to process an appeal even with incomplete Appointment of Representation forms 42 CFR § 422.561, 42 CFR § 423.560. However, any communications will only be sent to the beneficiary;

- CMS is allowing MACs and QICs in the FFS program 42 CFR 405. 950 and 42 CFR 405.966 and MA and Part D plans, as well as the Part C and Part D IREs to process requests for appeal that don't meet the required elements using information that is available 42 CFR § 422.562, 42 CFR § 423.562.
- CMS is allowing MACs and QICs in the FFS program 42 CFR 405. 950 and 42 CFR 405.966 and MA and Part D plans, as well as the Part C and Part D IREs, 42 CFR 422.562, 42 CFR 423.562 to utilize all flexibilities available in the appeal process as if good cause requirements are satisfied.

***Additional Guidance***

- The Interim Final Rules and waivers can be found at: <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>.
- The program and RADV audit guidance can be found at: <https://cms.gov/files/document/covid-19-programauditsradv-memo.pdf>.
- Updated Guidance for Medicare Advantage Organizations can be found at: <https://www.cms.gov/files/document/updated-guidance-ma-and-part-d-plan-sponsors-42120.pdf>.