

## **Frequently Asked Questions for Section 1876 and 1833 Cost Contract Plan Coverage Issues during the COVID-19 Public Health Emergency**

CMS is releasing guidance to section 1876 and 1833 cost contract plans (cost plans) concerning questions frequently asked about coverage during the COVID-19 public health emergency (PHE).

### **1. Are cost plans responsible for coverage of COVID-19 tests and testing-related services at zero cost sharing?**

Section 1876 and 1833 cost plans are not subject to the statutory provisions at section 1852(a)(1)(B) of the Social Security Act (the Act) requiring Medicare Advantage organizations to provide, at zero cost sharing to enrollees, COVID-19 testing, testing-related services, or COVID-19 vaccines and administration of such vaccines. Cost plans may, however, choose to waive cost sharing (including deductibles, copayments, and coinsurance) for the services described below:<sup>1</sup>

- ☐ clinical laboratory tests for the detection of SARS-CoV-2 or the diagnosis of COVID-19 and the administration of such tests;
- ☐ specified COVID-19 testing-related services (as described in section 1833(cc)(1) of the Act) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2); and
- ☐ COVID-19 vaccines and the administration of such vaccines, as described in section 1861(s)(10)(A).

Cost plan organizations may also develop plan designs for 2021 with cost sharing that is consistent with the testing and vaccine-related provisions discussed above, so that cost plan enrollees also get the benefit of the same cost sharing protections that section 1852(a)(1)(B) provides for MA enrollees regarding COVID-19 testing, testing-related services, and vaccines. Please see the April 21, 2020 HPMS memo, “Information Related to Coronavirus Disease 2019—COVID-19,” for details regarding the timeframes during which the COVID-19 related MA provisions are in place.

To align with our policies for MA plans, CMS will similarly exercise its enforcement discretion regarding the administration of benefit packages to permit cost plans to waive cost sharing (including deductibles, copayments, and coinsurance) for COVID-19 testing, its administration, and specified COVID-19 testing-related services until it is determined that the exercise of this

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<sup>1</sup> CMS consulted with the HHS Office of Inspector General (OIG) and HHS OIG advised that, should a cost plan choose to voluntarily waive or reduce enrollee cost-sharing or plan premiums, as approved by CMS per the April 21, 2020 HPMS memo, “Information Related to Coronavirus Disease 2019—COVID-19,” such waivers or reductions would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR § 1001.952(l).

discretion is no longer necessary in conjunction with the COVID-19 outbreak. As with any mid-year benefit or rule change, cost plans must apply the changes to everyone and notify CMS account managers of the change(s). For additional information on cost-sharing limits see the April 21, 2020 HPMS memo cited above.

## **2. May cost plans waive cost-sharing for other plan benefits and services?**

Cost plans may waive or reduce enrollee cost-sharing for COVID-19 treatment, telehealth benefits, or other services to address the outbreak, provided that cost plans waive or reduce cost-sharing for all similarly situated plan enrollees on a uniform basis. This flexibility is limited to when a waiver or reduction in cost-sharing for covered services can be tied to the COVID-19 outbreak.<sup>2</sup>

## **3. May cost plans waive plan premiums?**

Yes, a cost plan could waive plan premiums during the COVID-19 PHE if the waiver is offered to all plan enrollees uniformly. This flexibility is limited to when the waiver or reduction in the cost plan's premium can be tied to the COVID-19 outbreak.<sup>3</sup>

## **4. Are there flexibilities regarding disenrollment?**

Plans are not required under existing regulations to disenroll members due to failure to pay plan premiums or other cost-sharing; however, plans must apply the same policy consistently for all enrollees of the applicable plan. For those cost plans that have elected a policy to disenroll for non-payment of plan premium or cost-sharing, cost plans may change the policy and not disenroll members for non-payment. (We remind cost plans that 42 CFR § 417.460(c) also requires certain procedures be followed for disenrollments due to failure to pay plan premiums or cost-sharing.) Plans may make these types of changes mid-year as long as 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 applicable to all enrollees in the plan.

## **5. Do cost plans have flexibilities regarding telehealth services during the PHE?**

Cost plans may provide enrollees access to covered services via telehealth (in any geographic area and from a variety of places, including beneficiaries' homes) beyond the telehealth coverage available under Medicare Part B as an additional benefit. 42 CFR §§ 417.440(b)(2) and 417.452(d). Section 1833 cost plans have the same flexibilities in providing the telehealth benefits to their enrollees. In addition, in response to the unique circumstances resulting from the outbreak of COVID-19, should a cost plan wish to expand its coverage of non-Medicare telehealth services beyond those approved by CMS in the plan's benefit package for similarly situated enrollees impacted by the outbreak, CMS consulted with the HHS OIG and HHS OIG advised that, should a cost plan choose to expand coverage of telehealth benefits, as approved by

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<sup>2</sup> See footnote 1.

<sup>3</sup> See footnote 1.

CMS herein, such additional coverage would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR § 1001.952(*l*). CMS will exercise its enforcement discretion regarding the requirements at 42 CFR § 417.436(c) specifying the 30-day timeframe for prior notification to CMS of increases in benefits until it is determined that the exercise of this discretion is no longer necessary in conjunction with the COVID-19 outbreak.