MEDICARE ADVANTAGE PLANS AND MEDICAID MANAGED CARE PLANS: AN OVERVIEW

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Medicare Advantage Plans ("MAPs") and Medicaid Managed Care Plans ("MMCPs") were created with the passage of the Balanced Budget Act of 1997. Today, about 47% of Medicare beneficiaries are covered by MAPs and about 70% of Medicaid enrollees are covered by MMCPs. These percentages are increasing.

Overview of Federal Laws Governing MAPs and MMCPs

Federal laws governing MAPs and MMCPs (collectively referred to as "Plans") are extensive. However, only a small portion of the laws address the relationship between Plans and providers/suppliers that serve the enrollees covered by the Plans. Most of the laws aim to protect enrollees by setting minimum requirements for coverage, networks, and reimbursement.

MAPs

- At a minimum, the MAP must provide to enrollees the same benefits they would receive under Traditional Medicare.[1]
- The MAP has broad discretion to create a network of providers/suppliers.[2]
- CMS has the authority to approve premiums that will be charged to enrollees.[3]
- A MAP must have written policies and procedures for the selection of providers/suppliers.[4]

MMCPs

- Federal laws pertaining to MMCPs generally mirror the requirements for MAPs in terms of creating a network of providers/suppliers.[5]
- States must ensure that the MMCP has implemented written policies for the selection of providers/suppliers.[6]

Minimum Level of Service

MAPs

[1] 42 U.S.C. § 1395w-22(a)(1)
[2] 42 U.S.C. § 1395w-22(d)(4); 42 CFR § 422.205; and 42 CFR § 422.205(b)
[3] 42 U.S.C. § 1395w-24
[4] 42 CFR § 422.204(a)
[5] 42 U.S.C. § 1396u-2; 42 U.S.C. § 1396u-2(b)(7)
[6] 42 CFR § 438.214

- At a minimum, the MAP must provide to enrollees the same benefits they would receive under Traditional Medicare.[7]

- The MAP may offer supplemental benefits that the enrollee will pay for.[8]

MMCPs

- A state may require Medicaid enrollees to enroll in an MMCP.[9]

- At a minimum, the MMCP must provide to enrollees the same benefits they would receive under the state Medicaid plan.[10]

Access to Care

MAPs

- At a minimum, the MAP must provide to enrollees the same benefits they would receive under Traditional Medicare.[11]

- CMS establishes the network adequacy standards.[12]

- CMS only requires an attestation by the MAP that it is in compliance with the network adequacy standards.[13]

MMCPs

- The MMCP must provide assurance that (i) it offers an appropriate range of services and access to preventative and primary care enrollees and (ii) it will maintain a sufficient network of providers/suppliers.[14]

- States are required to develop and enforce network adequacy standards.[15]

- States are required to ensure that MMCPs maintain an adequate network of providers/suppliers...and that such providers/suppliers are credentialed.[16]

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[7] 42 U.S.C. § 1395w-22(a)(1); 42 CFR § 422.100(a)
[8] Medicare Managed Care Manual Ch. 4 – Benefits & Beneficiary Protections, Centers for Medicare & Medicaid Services 10.3, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c04.pdf (last visited November 21, 2021); 42 CFR § 422.100(l); 42 CFR § 422.102(2)(i)(A)
[9] 42 U.S.C. § 1396u-2(a)(1)(A)(i)
[10] 42 U.S.C. § 1396b(m)(1)(A)(i)
[11] 42 U.S.C. § 1395w-22(a)(1); 42 CFR § 422.100(a)
[12] 42 CFR § 422.116
[13] 42 CFR § 422.116(a)(2)
[14] 42 U.S.C. § 1396u-2(b)(5)
[15] 42 CFR § 438.68
[16] 42 CFR § 438.206(b)(1); 42 CFR § 438.214

Rights of a DME Supplier

MAPs

- There are no federal laws that directly provide relief to a DME supplier when the supplier believes that the MAP is violating its contract with the supplier.

- CMS provides appeal rights, that a DME supplier may request, when a MAP makes determinations that affect an enrollee's coverage or benefits.

- A contract dispute between a DME supplier and a MAP will not implicate federal laws unless the contract violation pertains to a Medicare requirement that the MAP is required to meet.

- Contracts must specify that providers/suppliers agree to comply with the MAP's policies and procedures.[17]

- The MAP retains discretion in determining many of the terms of the contract it enters into with providers/suppliers.

MMCPs

- There are no federal laws that directly provide relief to a DME supplier when the supplier believes that the MMCP is violating its contract with the supplier.

- Federal law requires the state to develop a plan for is Managed Medicaid Program.

- A contract dispute between a DME supplier and an MMCP will not implicate federal laws unless the contract violation pertains to a requfirement that the state is required to meet as part of offering a Managed Medicaid Program.

- A state must monitor its Managed Medicaid Program.[18]

- A state must collect data from its monitoring activities to improve the Managed Medicaid Program, including provider/supplier complaints.[19]

[17] Centers for Medicare & Medicare Services, Internet-Only Manual 100-16, Ch. 11, § 110.4
[18] 42 CFR § 438.66
[19] 42 CFR § 438.68(c)