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Removal of safe harbor affects EGWPs

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Medicare Part D may be on the brink of one of the biggest changes to the program since its beginning in 2006. A proposed rule[1] from the Department of Health and Human Services (HHS) would revise the safe harbor protection that currently allows pharmaceutical manufacturer rebates to be paid after the point-of-sale and start requiring such rebates to be credited against the drug's point-of-sale price.

This change could dramatically reduce the member's cost of many brand-name drugs that receive rebates for Medicare beneficiaries. It also affects employer group waiver plans (EGWPs) and merits immediate action on the part of plan sponsors and insurers offering insured EGWPs.

A new dynamic

Under the current rules, prescription drug plans (PDPs) and Medicare Advantage prescription drug plans (MAPDs) use anticipated rebate revenue to reduce their projected net plan liability. Rebates paid after the point-of-sale are more impactful than point-of-sale rebates at reducing bids submitted to the Centers for Medicare and Medicaid Services (CMS). As a result, both beneficiary premiums and the direct subsidy paid by the federal government are lower than they otherwise would be if the proposed rule is implemented.

The proposed rule would move the revenue from a retrospective payment to an additional discount at the point-of-sale. Some PDPs and MAPDs will need to reduce copays to pass actuarial equivalency tests. Beneficiaries may also see lower cost sharing below the deductible and anywhere that coinsurance is used. However, net plan liability increases when the beneficiary cost sharing and other federal subsidies, such as federal reinsurance and low-income cost-sharing subsidy (LICS), decrease.

Impact on EGWPs

Most EGWPs are likely to see a financial impact in 2020. When plan designs have no deductible and no coinsurance (i.e., copays only) the shift from post point-of-sale to point-of-sale rebates will affect spending phase progression and the net plan liability when coverage gap discount payments are reduced for brand-name scripts that receive rebates. The change would also impact net plan liability in the catastrophic spending phase if a beneficiary reaches it. Other plans with deductibles and coinsurance will see a higher net plan liability in all benefit phases and EGWP sponsors should evaluate how significant this rule change will be for their net plan liability.

To provide some degree of protection from the uncertainty associated with whether or not the proposed rule will be adopted, CMS announced that a demonstration project with expanded risk corridors will be available if the proposed rule becomes final. However, it only applies to PDPs and MAPDs so EGWP sponsors and insurers that offer EGWPs will not receive the same protection. Worse yet, PDPs and MAPDs are required to develop bids using the current rule, which will result in more aggressive bids and a lower direct subsidy. The lower direct subsidy will mean less revenue for EGWPs.

Strategies for EGWP sponsors and insurers

One option to mitigate against increasing net plan liability is for plan sponsors to shift their form of coverage away from EGWPs and pursue the retiree drug subsidy (RDS) from the federal government. This could make sense when the plan design uses coinsurance or deductibles and the rebates are significant. A financial analysis can determine whether this option produces sufficient net plan savings to merit the change. Even if adopted, it is likely that groups would return to the EGWP coverage option once the market stabilizes. It is important to note that deadlines for submitting an RDS application (including the actuarial attestation required) is 90 days prior to the effective date of coverage (60 days with an extension).

[1] The full text of the proposed rule, as published in the Federal Register, is available at https://www.federalregister.gov/documents/2019/02/06/2019-01026/fraud-and-abuse-removal-of-safe-harbor-protection-for-rebates-involving-prescription-pharmaceuticals.

Another option to limit the increase in net plan liability (but with some member disruption) would be altering the plan design to copays only. Once copays are established, the financial impact on plan sponsors (and insurers) is typically much less. Prior to using this approach, a plan sponsor should determine whether the copays used in the new plan design produce a plan that is at least actuarially equivalent to the defined standard plan. Plans that make no changes to beneficiary cost sharing are likely to provide a richer benefit than they would have prior to the rule change.

Insurers can reflect the change in rebate treatment in the premium they charge for coverage under an EGWP but could also offset the premium increase with changes to the benefit design (e.g., increasing cost sharing with changes to copays, deductible, and coinsurance). Given the uncertainty of the rule change, delaying finalizing 2020 rates as long as possible is a sound tactic that could prevent setting rates too high or too low. On a positive note, the decrease in direct subsidies over the last decade is likely to be reversed in 2021 if the proposed rule goes into effect because Part D bids will increase to reflect the loss of rebates accruing to plan sponsors.

One final word of caution for plan sponsors that insure their EGWP coverage: read the fine print. Insurance contracts often contain provisions that allow re-rating in certain circumstances, such as a change in law provision. Changes to the regulations governing this product could trigger an increase in premium even after the initial quote is accepted. It would be more transparent for insurers to issue two quotes for EGWP coverage (one effective with the current rule and one that will become effective upon adoption of the proposed rule).

Medicare Part D is constantly evolving, but the proposed rebate rule change is more significant than most of the other changes seen in the market. Careful analyses will guide the way to a plan sponsor's best option once all the factors that apply to a sponsor's situation are identified.

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