Employer Group Plans

July 2024

Presentation overview

I. Key Policies
II. Enrollment
III. Waivers

New section

I. Key Policies

Employer/union sponsored group health plans

- **EGWPs – Employer Group Waiver Plans: "800 series"**
  - EGWPs are employer-only Medicare Advantage (MA) and/or Part D plans
  - EGWPs may take advantage of CMS waivers to provide Part C and/or Part D benefits to Medicare beneficiaries
- **Employer-sponsored enrollment in individual plans**
  - Employer plans offered through **individual** MA and/or Part D plans
  - Some waivers apply
- Both must be employment-based

EGWP categories

- **Two longstanding basic categories of EGWPs**:
  - **EGWPs (non-direct)** – plans offered by third parties (Part D sponsors and MA organizations) to employer and union group sponsors. Employer contracts with a third party MA organization or Part D sponsor that, in turn, contracts with CMS. (Represents majority of EGWPs.)
  - **Direct Contract EGWPs ("E contracts")** – plans offered by employers or unions that directly contract with CMS to become Part D sponsors or MA organizations for their members. Employer contracts with CMS.
- **Postal Service Reform Act of 2022**

Same rights and protections

- EGWP requirements include but are not limited to providing all Medicare Part A and B services (for MA organizations) and meeting the "actuarially equivalent" test (for Part D sponsors)
  - MA organizations may develop EGWPs for Part B-only Medicare beneficiaries (Ch 9 30.4)
- EGWP enrollees have access to 1-800-MEDICARE and complaints will be entered into our complaints system (complaint tracking module or CTM)
- Beneficiaries in EGWPs are entitled to all rights and protections (e.g., Medicare benefits and grievance and appeals processes) that are available for Medicare Part C and D benefits to enrollees in individual MA and Part D plans. For instance, EGWPs:
  - Must furnish enrollees with accurate Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents
  - Must inform enrollees of their right to appeal adverse coverage determinations

Same rights and protections (con't.)

- EGWPs cannot diminish the Part D benefit
  - All formularies (drug lists) must meet CMS requirements including a minimum of covered Part D drugs
    - Part D sponsors, including EGWPs, create and submit formularies to CMS for approval
  - Once CMS approves a formulary, Part D sponsors, including EGWPs, must follow CMS rules in making "negative changes" (that is, reducing the drug benefit) to their formularies
    - CMS approval is required before removing drugs from any approved formulary ("base formulary" for EGWPs); increasing their cost-sharing; or restricting access (e.g., restricting quantity) with exceptions as follows:
      - » immediate substitutions that meet CMS requirements which can include, for instance,
        - replacing a brand name drug with a new generic drug and
        - starting in 2025, replacing a reference biological product with a new interchangeable biosimilar
      - » drugs removed from the market
    - For midyear negative changes, depending on the nature of the change, beneficiaries may be entitled to stay on the drug for the rest of the plan year
- Part D transition requirements apply
  - Initial supply
  - Notice

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Same rights and protections (con't.): Pharmacy access

- Part D sponsors, including EGWPs, must provide adequate access to retail pharmacies.
  - **Beneficiary choice of network pharmacy:** Part D sponsors, including EGWPs, cannot require an enrollee to get their prescriptions filled at one particular pharmacy or at mail order pharmacies.

EGWP Part D Medicare component: Defined standard benefit

- The definition of Part D supplemental benefits in 42 CFR §423.100 excludes supplemental benefits offered through EGWPs
  - All benefits above the defined standard Medicare Part D benefit offered by EGWPs are considered other, non-Medicare health coverage always paid after the coverage gap discount has been applied
  - See 42 CFR §§ 423.100 and 423.2305 finalized in 4157-FC, April 12, 2012 (77 Fed Register 22072)
  - See Calendar Year 2017 Announcement, pages 204-206 (April 4, 2016)

EGWPs are subject to monitoring and reporting

- EGWPs must comply with specified reporting requirements
- Star Ratings reporting requirements apply to all direct contract EGWPs ("E contracts") and PBPs that include 800 series EGWPs
- EGWPs are subject to Part C and Part D program audits that are conducted at the parent organization level.

Employers

- Employers can select a plan, choose benefits, and educate their members

New Section

II. Enrollment

Enrollment and Eligibility

- Enrollees of EGWPs must be eligible for Part C or D coverage, depending on the type of plan
- In order for a beneficiary to be eligible to enroll in an EGWP, he or she must permanently reside in the defined EGWP area
- In order for a beneficiary to be eligible for a stand-alone EGWP prescription drug plan (PDP), he or she must be a retiree

Employer Plans Play an Important Role in Educating Their Members

- Common member misunderstandings:
  - How Medicare Part C and D coverage works
  - How enrollment occurs and relates to retiree benefits
- Opt-out may result in serious consequences for the beneficiary
- Employers and unions need to communicate all benefits and requirements, including deadlines, to beneficiaries on time and in a clear manner

Employer Plans Play an Important Role in Educating Their Members (Con't.)

- Examples of potential consequences include:
  - Loss of retiree benefits due to opt-out
  - Assessment of a Part D late enrollment penalty (LEP) due to not maintaining creditable coverage or Part D for 63 days or more (LEP assessed monthly for as long as beneficiary has Part D coverage)
  - Disenrollment from the employer or union plan due to misunderstanding about the requirement to pay Part D-IRMAA (Income Related Monthly Adjustment Amount) directly to the government, if assessed

Group Enrollment Mechanism - Requirements

- Required notification to beneficiary
  - Either plan or employer/union can send
  - Notice of enrollment and the effective date
  - Must send at least 21 days prior to the effective date of the group enrollment
  - Must give enrollees the information on how to opt-out, and any consequences opting out would bring
  - Must include summary of benefits under the EGWP, and how to get more information and how to contact Medicare for information on other plan options

Optional Mechanism For Group-Sponsored Plan Enrollment

- Group enrollment mechanism outlined in the Medicare Advantage and Part D Enrollment and Disenrollment Guidance
- It is the plan organization/sponsor's responsibility to ensure the group enrollment process meets all applicable enrollment requirements
- Does not require an individual's active plan selection
  - Opt-out, not opt-in

Enrollment Request Mechanisms for Employer/Union Sponsored Coverage

- Data collection requirements
  - Employer or union must provide all the information required for organization to submit a complete enrollment request transaction to CMS
- Data submission requirements
  - Timeliness requirements still apply
  - Must submit proper effective date as permitted in guidance

Special Enrollment Period

- Beneficiaries enroll in EGWPs during time periods specified by employer or union and may disenroll from EGWPs at any time
- Employer Group Health Plan Special Enrollment Period (SEP) available for beneficiaries disenrolling from an EGWP to join an MA-PD or PDP
  - Always in effect for enrollees of EGWPs
  - Ends two months after loss of coverage

Failure to Pay Plan Premiums for Individuals in EGWPs

- Employer group paying premiums for their members = no disenrollment for non-payment
- The issue is between plan and employer group
- Individual paying premiums directly to plan = follow all rules for non-payment of premiums regardless of EGWP involvement

New Section

III. Waivers

Employer group waivers 101

- Section 1857(i) of the Social Security Act (cited in section 1860D-22(b)) gives the Secretary of the Department of Health and Human Services the authority to waive or modify requirements that hinder the design of, the offering of, or the enrollment in employer group plans.

Employer group waivers 101 (con't.)

- All EGWPs must follow all Medicare Part C and D requirements unless a requirement is explicitly waived or modified by CMS
  - E.g., see 42 CFR §423.458 finalized in 4157-FC, April 12, 2012 (77 Fed Register 22072)

Waiver parameters

- Waivers
  - Limited to scope described
  - Available to eligible employer groups that meet all the conditions described in the waiver
  - Waivers are described in CMS regulations and guidance, including employer group chapters in Managed Care Manual (MCM) Chapter 9 and Prescription Drug Benefit Manual (PDBM) Chapter 12; call letters; annual announcements; and HPMS memos
- Waiver requests
  - Any entity seeking to offer, sponsor, or administer an employer group plan can request in writing a waiver or modification of applicable MA or Part D requirements
  - The instructions for requesting waivers appear in appendices to MCM Chapter 9 and PDBM Chapter 12. Requests:
    - Provide citations to the specific statute, regulation, or guidance to be waived or modified;
    - Describe how the requirement hinders the design, offering, or enrollment in Medicare employer group coverage

Examples of waivers

- **Enrollment:** EGWP enrollment is not open to all Medicare beneficiaries in the service area but must be employment-based and, for PDPs, also be based on retiree status
- **Marketing and beneficiary communications:** CMS has waived any rules that would prohibit EGWPs from customizing dissemination materials to the extent the customized materials more clearly and accurately describe the benefits available
- **Premiums:** Uniform premium requirement may be modified if certain criteria are met

Examples of waivers (con't.)

- **Plan year:** EGWPs may establish non-calendar year plan benefit packages; most submissions to CMS will be determined on a calendar year basis
- **Part D Bids:** EGWPs do not submit as much information to CMS as other Part D sponsors; but they are still required to create and upload a base formulary and applicable plan information into HPMS
- **Part D Formulary:** EGWPs submit only the most restrictive base formulary which must meet all CMS requirements; once approved, EGWPS must still follow requirements to obtain CMS approval of negative changes to the approved formulary

New section

Resources

EGWP website and mailbox information

- EGWP website
  - https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/PartD-EGWP.html
- Part C EGWP mailbox address:
  - https://dpapportal.lmi.org/DPAPMailbox
- Part D EGWP mailbox address:
  - EGWP_Policy@cms.hhs.gov

EGWP enrollment inquiries

- For EGWP enrollment issues related to the Medicare Advantage and Part D Enrollment and Disenrollment Guidance, please contact: https://enrollment.lmi.org
- For all other enrollment EGWP issues, such as waivers, please direct your inquiry to either the Part C or Part D mailbox listed earlier.