

CMS Continues Expansion of Supplemental Benefits in Medicare Advantage Plans

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Last week, the Centers for Medicare and Medicaid Services (“CMS”) announced increased flexibility for Medicare Advantage health insurance plans to offer supplemental benefits (those benefits not covered under Medicare Parts A or B). Beginning in 2020, Medicare Advantage plans may offer chronically ill enrollees supplemental benefits that are not necessarily health-related but are reasonably expected to improve or maintain health or overall function. These changes are incorporated into the [2020 Medicare Advantage and Part D Rate Announcement and Final Call Letter](#).

New Explanation of Previously Expanded Health-Related Supplemental Benefits



Last year, CMS expanded what Medicare Advantage plans may cover as supplemental health care benefits. We previously addressed the expansion of health-related supplemental benefits [here](#). The move redefined “primarily health related” supplemental benefits to include items or services with a primary purpose to “diagnose, prevent, or treat an illness or injury, compensate for physical impairments, act to ameliorate the functional/psychological impact of injuries or health conditions, or reduce avoidable emergency and healthcare utilization.” A supplemental benefit is not primarily health related if it is solely or primarily used for cosmetic, comfort, or general use purposes. This week, while responding to requests for clarification, CMS provided the following examples of supplemental benefits that would qualify as primarily health related:

- Compression garments as part of an over-the-counter benefit
- Cooking classes as part of a nutritional/dietary or health education benefit
- Fall prevention kits as part of home & bathroom safety devices
- Implantable hearing aids, such as middle ear implants as part of a hearing benefit

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CMS noted that such primarily health related supplemental benefits should be entered and briefly described in the plan benefit package.

New Supplemental Benefits for the Chronically Ill

The Bipartisan Budget Act of 2018 introduced new categories of supplemental benefits for the chronically ill. Special supplemental benefits for the chronically ill (“SSBCI”) include benefits that are not primarily health related and may be offered non-uniformly^[1] to eligible enrollees. According to the new law, a chronically ill person: (1) has one or more comorbid and medically complex chronic conditions that is life threatening or significantly limits the overall health or function of the enrollee, (2) has a high risk of hospitalization or other adverse health outcomes, and (3) requires intensive care coordination.^[2] For 2020, CMS will consider any enrollee with a condition identified as a chronic condition in section 20.1.2 of Chapter 16b of the Medicare Managed Care Manual to meet the statutory criterion (1) above, which would include approximately 73 percent of the Medicare Advantage population. Medicare Advantage plans must document their determinations that enrollees meet all three criterion above before providing SSBCI.

In addition to being limited to chronically ill enrollees, SSBCI must “have a reasonable expectation of improving or maintaining the health or overall function of the enrollee as it relates to the chronic condition or illness.” CMS explained that SSBCI could be provided to enrollees with degenerative conditions whose health worsen over time, even though this may apparently contradict the requirement that SSBCI improve or maintain the health or function of individuals. The SSBCI need only improve or maintain the health or overall function of an enrollee while the enrollee is using said supplemental benefit. Permissible examples of SSBCI include:

- Meals furnished to the enrollee beyond a limited basis
- Transportation for non-medical needs such as grocery shopping
- Pest control
- Indoor air quality equipment and carpet shampooing to reduce irritants that may trigger asthma attacks
- Benefits to address social needs
- Capital or structural improvements, e.g., permanent ramps, and widening hallways or doorways

Medicare Advantage plans must still incur a non-zero direct medical cost for supplemental benefits. CMS stated that, for SSBCI, such incurred cost should be a non-administrative cost even if it is not necessarily paid to a medical provider. For example, a plan may contract with a community-based organization such as a meal delivery service.

For any questions about this increased flexibility, please your contact the authors or your regular attorney at Dorsey & Whitney.

[1] CMS is waiving uniformity requirements with respect to SSBCI, as authorized by Section 1852(a)(3)(D)(ii) of the Social Security Act.

[2] Section 1852(a)(3)(D)(ii) of the Social Security Act.