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CMS Expands Health Related Supplemental Benefits in Medicare Advantage Plans

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Last month, the Centers for Medicare and Medicaid Services ("CMS") announced new flexibility in what Medicare Advantage plans may cover as "supplemental health care benefits." The announcement was part of CMS' release of Calendar Year 2019 Medicare Advantage and Part D Rate Announcement and Call Letter. The Medicare Managed Care Manual (Chapter 4, Section 30.1) defines supplemental benefits as (1) not covered by original Medicare, (2) primarily health related, and (3) incurring a non-zero direct medical cost. Primarily health related items or services previously have been described as having a primary purpose to "prevent, cure or diminish an illness or injury" and primary purposes of comfort, cosmetic, or daily maintenance have been specifically excluded.

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CMS' new interpretation of "primarily health related" expressly allows daily maintenance and other items. The agency's justification to expand its interpretation was that items and services that can *diminish the impact* of injuries or health conditions have been shown to reduce emergency care and overall utilization of health care services. The one example provided in the call letter was fall prevention devices, e.g., support bars in bathrooms and showers. Primarily health related items or services must now have 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." Items or services "must be reasonably and rationally encompassed" by at least one of these purposes. In addition, CMS stated that the benefits need to directly focus on an enrollee's healthcare needs, be medically appropriate, and be "recommended" by a provider as part of a care plan if not

supplied by that provider. Importantly, a physician order is not necessary for an item or service to be “recommended.” Keeping with federal beneficiary inducement prohibitions, plans may not offer supplementary benefits that are solely inducements to enroll.

Clearly, this new interpretation of “primarily health related” creates a much broader allowance for items or services than only those that prevent, cure or diminish illness or injury under the old definition. Services that compensate for physical impairments might include transportation, cooking, or cleaning. Services that reduce healthcare utilization might include more intensive home-based support to keep Medicare Advantage enrollees in their homes and out of nursing facilities. Many groups stand to benefit from the increased flexibility for supplemental benefits, most obviously being plan sponsors, who can take a more comprehensive approach to healthcare to drive down utilization. Ride-hailing services, such as Uber and Lyft, may be enlisted to provide transportation to medical appointments, while grocery delivery services like Instacart could keep beneficiaries stocked with healthy foods selected for individual dietary needs. Finally, beneficiaries themselves will enjoy assistance with daily tasks that impact their health and allow them to age-in-place, at home. What remains unknown is whether CMS will eventually roll out similar benefits to traditional Medicare, which covers approximately two-thirds of all Medicare enrollees. Traditional Medicare still does not cover directly health related supplemental benefits such as dental care and eyeglasses that Medicare Advantage has been covering for years under the more restrictive definition of supplemental benefits.