CMS Rejects Massachusetts’ Medicaid Closed Formulary Proposal

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Summary

On June 27, CMS notified Massachusetts of a partial approval of the MassHealth program’s proposed 1115 waiver request.

While CMS approved new expenditure authority for the MassHealth program and modified existing provisions defining the financial eligibility for disabled adults, the agency denied MassHealth’s proposal to create a closed formulary and did not at this time approve its request to reduce ACA expansion eligibility levels to 100% of the federal poverty level (FPL).

With the aim of constraining healthcare cost growth, Massachusetts requested the authority to implement a closed formulary in Medicaid. Under this proposal, rather than covering every drug made by a manufacturer that participates in the federal Medicaid rebate program, MassHealth would have included at least 1 drug per therapeutic class. Massachusetts also requested the authority to create a selective specialty pharmacy network to increase cost effectiveness, noting that the use of such networks is standard practice in commercial health plans. The waiver amendment request stated that the provision would have yielded both cost savings and better alignment of MassHealth coverage with commercial plans, including MassHealth managed care organizations (MCOs), which already use specialty pharmacy networks. These provisions were not approved by CMS.

CMS also did not approve Massachusetts’ request to lower its Medicaid expansion eligibility threshold to 100% FPL and move non-disabled adults between 21-64 years of age into subsidized plans on the exchange. However, the agency did not explicitly deny this request. Similar to its
handling of the request to lower the Medicaid expansion eligibility threshold from Arkansas earlier this year, the agency noted it is “not at this time approving” the request.

In its response to Massachusetts’ waiver request, CMS stated it was denying the state’s proposal to use a closed formulary because the proposal would have also preserved statutory rebates. CMS noted it would consider proposals to institute a closed formulary in Medicaid if the state agrees to forgo the mandatory rebates available through the federal Medicaid rebate program. However, forgoing mandatory rebates could potentially shift more of the financial burden for Medicaid drug expenditures to the individual state. This could be particularly acute for drugs without competitors, for which a closed formulary would not create a rebate incentive. If giving up mandatory rebates, states may lose the only discount available on those products.

The President’s FY2019 budget proposal included provisions to test formulary controls in Medicaid by allowing 5 states to create closed formularies as a demonstration. Given this recent notice from CMS, it is likely the pilot program would be designed to have the participating states give up mandatory rebates in order to have the option to exclude products from Medicaid. As mentioned above, states would have to weigh whether a closed formulary is worth foregoing guaranteed rebates through the Medicaid Drug Rebate Program. It is unclear if any states would find this scenario acceptable, or how many would be willing to opt in to the demonstration program.

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