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CLIENT ALERT

CMS Releases Proposed Rule to Consolidate Eligibility, Notices, Appeals, and Cost-sharing Maximums for Medicaid, CHIP, and Exchanges

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On January 14, 2013, the Centers for Medicare & Medicaid Services released a proposed rule, titled, Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing. The proposed rule:

- Provides states with more flexibility to coordinate Medicaid and CHIP eligibility notices, appeals, and related administrative procedures with other health coverage programs under the Affordable Care Act. The proposed rule allows states to choose between a state agency that delegates the authority to make final determinations in Medicaid aid and CHIP eligibility, or retaining the current Medicaid and CHIP appeals functions.
- Amends the April 30, 2010 final rule, titled "State Flexibility for Medicaid Benefit Packages" by striking the terms "benchmark and benchmark-equivalent plan" from part 440 and replacing them with "Alternative Benefit Plan" in order to implement the benefit options available to low-income adults beginning January 1, 2014.
- Balances the need for standardization (because of efficiency or consumer protections) with the desire to empower states with more discretion in the design and operation of an Exchange by setting forth standards for, *inter alia*:
    - adjudicating appeals of individual eligibility determinations and exemptions for the individual responsibility requirement;
    - determining employer-sponsored coverage
    - Small Business Health Options Program (SHOP) employer and employee eligibility and appeals; and
    - Verification of enrollment in and eligibility for minimum essential coverage through an eligible-employer sponsored plan.
- Updates and simplifies the Medicaid premiums and cost-sharing requirements by:
    - Updating the maximum allowable cost-sharing level, eliminating the current practice of basing the cost-sharing charge for outpatient services on what the agency pays for the service, and instead replacing it with a flat $4 maximum allowable charge for outpatient services.
    - Expanding the flexibilities related to drugs and emergency department usage by proposing options for States to establish higher cost-sharing for non-preferred drugs and to impose higher cost-sharing for non-emergency use of emergency departments.
    - Simplifying the rule by no longer distinguishing between Sections 1916 and 1916A, the statutory bases for premiums and cost sharing, by simply stating the circumstances under which premiums and cost sharing are permitted.
- Examines whether, in light of the initial open enrollment period for enrolling in a Qualified Health Plan through an Exchange, the effective date of the changes to the Medicaid and CHIP regulations should be October 1,2013 or a later date.

Comments on the proposed rule are due by February 13, 2013.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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