CMS Delays Proposal To Make Medicaid Transportation Benefit Optional

June 24, 2019

CMS appears to be postponing its plan to undo a longstanding regulation that requires state Medicaid programs to provide transportation for beneficiaries to travel to and from non-emergency medical appointments.

A proposed rule that would allow states to opt out of providing the benefit is now expected to be released in 2021, according to the agency’s regulatory agenda with the White House budget office. CMS had originally targeted the proposed rule for a release in the spring of this year, but it has garnered opposition from many stakeholders and members of Congress, including some Republicans.

Medicaid has covered non-emergency medical transportation services since the program’s inception—and in recent years, the NEMT benefit has been reshaped as ride-hailing companies like Uber and Lyft have entered the business. An estimated 10% of Medicaid beneficiaries rely on NEMT for rides to kidney dialysis appointments, substance abuse treatment programs, pharmacies and other routine care. The benefit is reserved for people who have no other access to reliable transportation.

NEMT is not a mandatory benefit under the Medicaid statute, but states are nonetheless required to cover it under a federal regulation that was originally codified in 1969.

The Trump administration supports revoking that regulation. President Trump’s budget proposals for fiscal 2019 and 2020 both called for making NEMT an optional benefit, and last fall, CMS added the idea to its regulatory agenda—a formal list of the agency’s regulatory goals published biannually by the Office of Management and Budget. The fall agenda said the agency was working on a proposed rule to roll back the requirement for states to cover NEMT, and the agenda’s timetable set the proposed rule’s release for May 2019.

The agency did not release the proposed rule last month, and its target date has now been pushed back by more than two years. On the agency’s spring regulatory agenda, the proposed rule has now been designated a “long term action” — a classification used for regulatory plans not expected to be finalized for at least a year — and the target date has been changed to December 2021.

CMS did not respond to repeated inquiries from Inside Health Policy about the reasons for the delay.

Medicaid stakeholders who support mandatory NEMT benefits expressed cautious optimism about the delay but added that the postponement is not binding. The agency could still issue the proposed rule at any time. Moreover, if CMS simply wishes to revoke the existing regulatory requirement, that proposal would not necessarily entail complex rulemaking requiring many months of preparation, stakeholders added.

The agency’s signal that it will take its time on the issue comes as numerous provider groups, beneficiary advocates and lawmakers seek to retain NEMT as a mandatory benefit.

“NEMT is an essential component of our nation’s health care delivery system, especially in rural areas,” dozens of stakeholders wrote in a May letter to leaders of the House Appropriations health subcommittee. They said eliminating Medicaid NEMT would harm beneficiaries, managed care plans and state budgets.

In a separate letter, three lawmakers from Georgia—two Republicans and one Democrat — urged CMS Administrator Seema Verma to think carefully before implementing any policy that would limit NEMT.

At the urging of Rep. Sanford Bishop (D-GA), the House Appropriations Committee approved a spending limitation that would prevent CMS from proceeding with its proposed rule on NEMT. The committee added the one-sentence

limitation to the "minibus" appropriations bill that passed the House on Wednesday (June 19). The language would bar the agency from using any funds in fiscal 2020 to publish the rule.

In its Statement of Administration Policy on the appropriations bill, H.R. 2740, the White House formally opposed that language. The policy statement, which threatens to veto the bill, includes the NEMT limitation on a long list of provisions the administration finds objectionable.

Stakeholders view that inclusion as a signal that the administration remains committed to making NEMT an optional benefit, despite the regulatory delay at CMS.

“It’s obviously disquieting to see it” in the administration’s policy statement, said Marsha Simon, the president of MJ Simon & Co. The health care lobbying firm’s clients include LogistiCare, the nation’s largest benefits manager of NEMT services.

Even if CMS does not move forward immediately with a rule revoking the NEMT requirement, the agency can grant waivers to individual states allowing them to eliminate NEMT for some beneficiaries. Three states—Indiana, Iowa and Kentucky—have already received such waivers, though Kentucky’s waiver, which also included Medicaid work requirements and other controversial provisions, was blocked from taking effect by a federal judge. – James Romoser (jromoser@iwpnews.com)

Related News | Medicaid | 110176