DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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MEDICARE PLAN PAYMENT GROUP

DATE: July 10, 2020

TO: All Medicare Advantage Organizations, Cost Plans, PACE Organizations, and Demonstrations

FROM: Jennifer R. Shapiro, Director, Medicare Plan Payment Group

SUBJECT: **Application of the Merit-based Incentive Payment System (MIPS) Payment Adjustment to Medicare Advantage Out-of-Network Payments - Update**

This memorandum updates and consolidates our guidance to Medicare Advantage organizations (MAOs) regarding the application of the Merit-based Incentive Payment System (MIPS) payment adjustment to their payments to non-contract MIPS eligible clinicians. The guidance in this memorandum is not intended to apply to MAOs' payments to contract clinicians.[1] As explained in greater detail below, effective January 1, 2021, MAOs will be expected to pay the full amount owed to non-contract MIPS eligible clinicians, including any positive MIPS adjustments, within 30 days of the date of receipt of a clean claim.

Merit-based Incentive Payment System (MIPS)

Beginning in 2017, MIPS eligible clinicians are evaluated during a MIPS performance period across the following performance categories: Quality, Promoting Interoperability, Improvement Activities, and Cost. Based on their performance, MIPS eligible clinicians will receive a positive, neutral, or negative MIPS payment adjustment during the corresponding MIPS payment year. Performance in 2018 will be used to determine the MIPS payment adjustment that applies in the 2020 MIPS payment year. The MIPS payment adjustment will be applied to the amount otherwise paid for the clinician's covered professional services (i.e., services furnished by the MIPS eligible clinician and paid under or based on the Medicare physician fee schedule (PFS)).

MIPS Payment Adjustments

The maximum positive and negative MIPS adjustments for each payment year are as follows: in 2019, +/-4 percent; in 2020, +/-5 percent; in 2021, +/-7 percent; and in 2022 and subsequent years, +/-9 percent. Positive MIPS adjustment factors may be increased or decreased by a scaling factor (not to exceed 3.0) to ensure that the adjustments are budget neutral. For payment years 2019 to 2024, MIPS eligible clinicians who are determined to be exceptional performers

[1] Section 1854(a)(6)(B)(iii) of the Social Security Act ("the Act") prohibits CMS from interfering in payment arrangements between MAOs and contract clinicians by requiring specific price structures for payment. Thus, whether and how the MIPS payment adjustments might affect an MAO's payments to its contract clinicians are governed by the terms of the contract between the MAO and the clinician.

can receive an additional positive MIPS payment adjustment.

Additional information on the MIPS payment adjustments is available at: https://www.cms.gov/Medicare/Quality-Payment-Program/Quality-Payment-Program.html.

Application of MIPS Payment Adjustment to MA Non-Contract Provider Payments

When an MAO's coverage responsibilities include payment for services furnished to an enrollee by a non-contract provider (including a provider who is "deemed" to be contracting under a private fee-for-service (PFFS) plan), the MA plan's payment to the provider must be equal to the total dollar amount that would have been authorized for such services under Medicare Parts A and B, less any cost-sharing paid by the enrollee under the MA plan. Section 1852(a)(2) of the Act (42 U.S.C. § 1395w-22(a)(2)); 42 CFR. 422.100(b)(2), 422.114. In addition, section 1852(k)(1) of the Act provides that a physician or other entity (other than a "provider of services" as defined in section 1861(u)) that does not have a contract establishing payment amounts for services furnished to a beneficiary enrolled in an MA plan must accept as payment in full the amount that the physician or other entity would be paid if the beneficiary were enrolled in Medicare FFS Parts A and B only; any penalty or "other provision of law" applicable to such payment under Medicare FFS would also apply to the payment from the MA plan.

Applying the MIPS Payment Adjustment

Under Medicare FFS, the MIPS payment adjustment factor, and if applicable, the additional MIPS payment adjustment factor, are applied to the Medicare paid amount for covered professional services for which payment is made under or based on the Medicare PFS. For covered professional services, the Medicare paid amount is generally 80 percent of the PFS allowed amount.

Under Medicare FFS, MIPS payment adjustments are not applied to the portion of the PFS allowed amount that represents beneficiary cost-sharing (generally 20 percent of the PFS allowed amount for covered professional services). Therefore, the total amount paid to a MIPS eligible clinician for covered professional services is the MIPS-adjusted, Medicare paid amount plus beneficiary cost-sharing. When a MIPS eligible clinician furnishes services to an MA plan member on a non-contract basis, the combined payment that the clinician receives from the MAO and the plan member must be no less than the total MIPS-adjusted payment amount that the clinician would have received under Medicare FFS. Although MAOs are required to reflect positive MIPS payment adjustments in payments for covered professional services to non-contract MIPS eligible clinicians, application of any negative MIPS payment adjustment is at the discretion of the MAO.

MIPS payment adjustments are applied on a per-claim basis. MAOs may apply MIPS payment adjustments either at the time payment is made to a MIPS eligible non-contract clinician for covered professional services furnished during the applicable MIPS payment year or as a retroactive adjustment to paid claims. CMS recommends that MAOs that apply a retroactive adjustment to paid claims provide notice to affected non-contract clinicians as soon as possible to eliminate concern that the combined payment from the MAO and plan member will not equal the applicable MIPS-adjusted payment amount. MAOs must continue to meet the prompt payment requirements in section 1857(f)(1) of the Act and § 422.520(a).

For 2019 and 2020, CMS is using our enforcement discretion to not take action against an MAO that pays positive MIPS adjustments outside of the 30-day prompt payment window established in section 1857(f)(1) of the Act and § 422.520(a). We are giving MAOs this additional flexibility for the first two MIPS payment years so that MAOs are not penalized due to unforeseen difficulties or delays in updating their payment systems to apply the MIPS payment adjustments to non-contract claims. We note that this policy for 2019 and 2020 does not abrogate the right of MIPS eligible clinicians to receive interest on amounts that are not paid within the prompt payment window. Section 1857(f)(1) of the Act (42 U.S.C. § 1395w-27(f)(1)); 42 CFR 422.520(a)(2).

Effective January 1, 2021, CMS will no longer use our enforcement discretion in connection with payment of MIPS adjustments outside of the required 30-day prompt payment window. Thereafter, MAOs will be expected pay the full amount owed to non-contract MIPS eligible clinicians, including any positive MIPS adjustments, within 30 days of the date of receipt of a clean claim. § 422.520(a)(1). MAOs that fail to pay positive MIPS adjustments to non-contract MIPS eligible clinicians in accordance with the prompt pay requirement may be subject to sanctions, including contract termination under § 422.510(a)(4)(iv).

Effect on MA Plan Cost-Sharing

MA plan enrollees are responsible for plan-allowed cost-sharing for out-of-network services. If an MA plan requires a fixed copayment for out-of-network services, cost-sharing is limited to the copayment amount. For MA plans that use a coinsurance method of cost-sharing, member cost-sharing may be calculated under Approach 1 or Approach 2, described below. We note, however, that bid pricing must be consistent with whichever approach an MAO uses to operationalize the MIPS adjustments in order to accurately reflect the MAO's plan design and revenue needs.

To illustrate the possible approaches for determining member cost-sharing, consider a scenario in which a non-contract MIPS eligible clinician who is entitled to receive a MIPS payment adjustment of +5 percent bills an MAO for a covered professional service with a physician fee schedule (PFS) allowed amount of $100. The total MIPS-adjusted payment amount would be calculated as follows:

Medicare paid amount:	80% * $100 = $80
MIPS-adjusted Medicare paid amount:	105% * $80 = $84
Medicare FFS cost-sharing:	20% * $100 = $20
Total MIPS-adjusted payment amount:	$104

Copay Approach

If the MA plan requires a $30 copayment for out-of-network services, the MAO would be responsible for the total MIPS-adjusted payment amount net of the beneficiary's $30 copayment.

Total MIPS-adjusted payment amount:	$104
Enrollee cost-sharing ($30 copayment):	$30
MA plan liability:	$104 − $30 = $74

Coinsurance Approach 1: Calculate member cost-sharing as a percentage of MIPS-adjusted payment amount

Under this approach, if plan-allowed coinsurance is 30 percent, the plan member would be responsible for 30 percent of the MIPS-adjusted payment amount, and the MAO would be responsible for the remaining 70 percent.

MIPS-adjusted payment amount:	$104
Enrollee cost-sharing (30% coinsurance):	30% * $104 = $31.20
MA plan liability:	70% * $104 = $72.80

Coinsurance Approach 2: Calculate member cost-sharing as a percentage of PFS allowed amount

Under this approach, member cost-sharing would be calculated by multiplying the coinsurance percentage by the PFS allowed amount *prior to application of the MIPS adjustment*. Plan liability would then be equal to the total MIPS-adjusted payment amount minus enrollee cost-sharing.

PFS allowed amount:	$100
Enrollee cost-sharing (30% coinsurance):	30% * $100 = $30
MIPS-adjusted payment amount:	$104
MA plan liability:	$104 − $30 = $74

For examples of how coinsurance is calculated under each approach in a scenario in which a provider receives a negative MIPS adjustment, see Appendix A.

MIPS Payment Adjustment Data File

For each MIPS payment year, CMS will upload to HPMS (https://hpms.cms.gov) a data file that lists each MIPS eligible clinician (identified by a unique Taxpayer Identification Number and National Provider Identifier (TIN/NPI) combination) and the corresponding MIPS payment adjustment percentage, including any additional adjustments for exceptional performance.

An MAO can identify the applicable MIPS adjustment percentage for a MIPS eligible clinician by matching the clinician's billing TIN/NPI combination to a TIN/NPI combination in the 2020 MIPS payment adjustment data file. If an exact match for the billing TIN/NPI combination does not appear in the data file, the MAO should determine whether the NPI appears in combination with another TIN and, if so, apply the MIPS adjustment percentage associated with that TIN/NPI combination. If the NPI appears in more than one TIN/NPI combination in the data file, the MAO should apply the MIPS adjustment percentage for the TIN/NPI combination that results in the greatest total payment amount.

The MIPS payment adjustment data file will be added to the "Incentive Payments" section of the HPMS Data Extract Facility (HPMS Home > Data Extract Facility > Incentive Payments).

CMS will issue an HPMS announcement informing MAOs of the release of the 2020 MIPS payment adjustment data file. We expect that this file will be made available at the end of 2019, after CMS has completed targeted reviews of MIPS payment adjustment factors.

Additional Information

If you have questions about this HPMS notice, please contact the MA Out of Network Payment mailbox at MA-OON-Payment@cms.hhs.gov.

Appendix A

MIPS Positive Adjustment Example: 30% coinsurance

Step 1: Calculate total MIPS-adjusted payment amount under Medicare FFS	
MIPS adjustment percentage:	+5%
PFS allowed amount:	$100.00
Medicare-paid amount:	80% * $100.00 = $80.00
MIPS-adjusted Medicare-paid amount:	105% * $80.00 = $84.00
Medicare FFS cost-sharing:	20% * $100.00 = $20.00
Total MIPS-adjusted payment amount:	$84.00 + $20.00 = ***$104.00***
Step 2: Calculate member cost-sharing and plan liability	
Approach 1: Calculate member cost-sharing as a percentage of MIPS-adjusted payment amount	
Member cost-sharing:	30% * $104.00 = $31.20
MA plan liability:	70% * $104.00 = $72.80
Approach 2: Calculate member cost-sharing as a percentage of PFS allowed amount	
Member cost-sharing:	30% * $100.00 = $30.00
MA plan liability:	$104.00 − $30.00 = $74.00

MIPS Negative Adjustment Example: 30% coinsurance

Step 1: Calculate total MIPS-adjusted payment amount under Medicare FFS	
MIPS adjustment percentage:	-5%
PFS allowed amount:	$100.00
Medicare-paid amount:	80% * $100.00 = $80.00
MIPS-adjusted Medicare-paid amount:	95% * $80.00 = $76.00
Medicare FFS cost-sharing:	20% * $100.00 = $20.00
Total MIPS-adjusted payment amount:	$76.00 + $20.00 = ***$96.00***
Step 2: Calculate member cost-sharing and plan liability	
Approach 1: Calculate member cost-sharing as a percentage of MIPS-adjusted payment amount	
Member cost-sharing:	30% * $96.00 = $28.80
MA plan liability:	70% * $96.00 = $67.20
Approach 2: Calculate member cost-sharing as a percentage of PFS allowed amount	
Member cost-sharing:	30% * $100.00 = $30.00
MA plan liability:	$96.00 − $30.00 = $66.00