The HHS OIG Proposed Rule to Eliminate Manufacturer Rebates in Part D Will Harm Medicare Advantage

BETTER MEDICARE ALLIANCE

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Key Facts

- 43 million beneficiaries have prescription drug coverage through Medicare Part D.
- 16.4 million beneficiaries have prescription drug coverage as part of a non-employer integrated MA-PD plan (98% of all non-employer MA plan beneficiaries).
- 7.7 million beneficiaries are enrolled in integrated MA-PD plans and currently pay no premium for their prescription drug coverage (48% of all MA-PD beneficiaries).
- Of all beneficiaries in Medicare Advantage today, 62% have dental coverage,
- The rule's various cost estimates range from saving taxpayers $100 billion to costing taxpayers nearly $200 billion over ten years.

BMA Policy Recommendations

In addition to the estimated increase in beneficiary premiums, BMA is concerned that the proposed rule would have unintended consequences on Medicare Advantage and plans' ability to maintain access to supplemental benefits. BMA urges HHS OIG not to finalize this rule and to work with stakeholders to identify solutions that minimize the negative consequences to beneficiaries in integrated MA-PD plans.

The Department of Health and Human Services' (HHS) Office of Inspector General (OIG) issued a proposed rule that would eliminate the regulatory safe harbor protection for rebates negotiated between drug manufacturers and pharmacy benefits managers (PBMs) and would create a new safe harbor protection for negotiated point-of-sale discounts.

Background on the Proposed Rule

The proposed rule would eliminate the regulatory safe harbor protection for rebates, which are currently negotiated between pharmacy benefit managers (PBMs) and drug manufacturers, effective January 1, 2020. The rule would create two new safe harbor protections: one for discounts that would be passed through to the beneficiary at the point-of-sale and another for fixed-fee arrangements between plans and PBMs.

Part D rebates, which are a partial return of a drug's list price to the PBM, are currently used by Part D plans to lower premiums for all of its enrollees. In integrated Medicare Advantage-Prescription Drug (MA-PD) plans, where plans have a combined premium for medical and drug benefits Part D rebates serve to lower the overall premium or provide supplemental benefits.

Impact of the Proposed Rule on Beneficiaries

Impact to Beneficiary Premiums

According to HHS' own analysis, the rule is estimated to increase premiums for all Part D beneficiaries by **19% in the first year** and **25% over the next ten years**. This would represent the largest increase in Part D premiums in the program's history.

According to a BMA commissioned analysis, which is based on Part D manufacturer rebates provided to MA-PD plans and uses the same assumptions on rebate allocation as CMS' Office of the Actuary (OACT), Avalere estimates that pharmaceutical rebates passed to MA-PDs would **decrease by $5.6 billion**, proportionally to their enrollment. As a result, MA-PDs would either need to increase premiums or decrease supplemental benefits.

Assuming that MA-PDs that have premiums (which cover approximately 8.5 million beneficiaries) choose to offset the entire reduction in pharmaceutical rebates by increasing those premiums, Avalere's analysis finds that consolidated Part C and D monthly premiums would **increase by $29 per beneficiary**. Alternatively, the plans that continue to offer zero-dollar premium plans in 2020 may need to reduce their supplemental benefit offerings as a result of the decrease in rebates.

Impact to Supplemental Benefits

Integrated MA-PD plans use Part D rebates to keep premiums for prescription drug coverage low for beneficiaries. In fact, 7.7 million beneficiaries in MA-PD plans today pay no premium for prescription drug coverage. Part D rebates allow integrated MA-PD plans to use more resources to finance supplemental benefits, such as dental or hearing coverage. The elimination of Part D rebates will reduce MA-PD plans' funds for financing supplemental benefits. According to Avalere's analysis, MA-PD plans could see an average **28% decrease in rebate funding**, or a decrease of **$228 per person per year**.

Impact to Federal Spending

The impact of the rule federal spending is very unclear. The proposed rule includes several estimates, which range anywhere from **costing taxpayers nearly $200 billion** to **saving $100 billion,** over ten years. The sheer uncertainty of the rule's impact on federal spending is unprecedented.