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**DATE:** January 2, 2020

**TO:** All Medicare Advantage Organizations

**FROM:** Sharon Donovan, Director, Program Alignment Group, Medicare-Medicaid Coordination Office

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**SUBJECT:** CORRECTED - Addressing Continuity of Care for Dually Eligible Enrollees Currently Receiving Opioid Treatment Program Services through Medicaid

With the implementation of the Medicare Opioid Treatment Program (OTP) benefit on January 1, 2020, Medicare becomes primary payer for dually eligible enrollees who may previously have obtained these services through Medicaid.<sup>1</sup> Ensuring continuity of care for your dually eligible enrollees currently obtaining treatment from an OTP provider through Medicaid is imperative.

### **Background**

Medicare is implementing a new OTP benefit on January 1, 2020. In the Calendar Year (CY) 2020 Call Letter released April 1, 2019, CMS reminded plans that opioid use disorder (OUD) treatment services furnished by OTPs must be covered as a Medicare Part B benefit beginning January 1, 2020. Effectively delivering this benefit, both in Original Medicare and in Medicare Advantage (MA), is an important part of addressing the nation's opioid epidemic.

For details on the new Original Medicare benefit, including the final regulation and details on the billing codes, see <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Opioid-Treatment-Program/index>.

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<sup>1</sup> All states except Arkansas, Idaho, Kansas, Louisiana, Nebraska, North Dakota, South Carolina, Tennessee, and Wyoming currently cover OTP in their Medicaid program. These nine states must cover OTP starting October 1, 2020.

## **Continuity of Care and Transition Process**

Under section 1852(a) of the Social Security Act (“the Act”) and 42 CFR §422.100, MA plans must cover all Part B benefits, including the new Medicare OTP benefit.<sup>2</sup> MA plans may meet this obligation by contracting with OTP providers or making other arrangements with non-contracted OTP providers. Per 42 CFR §422.112, MA plans must ensure that enrollees have access to all medically necessary OTP services consistent with prevailing community patterns of care. When evaluating prevailing community patterns of care, CMS has discretion to take into account several factors, including the Original Medicare program access within a service area and the number and geographical distribution of eligible health care providers available to potentially contract with an MA organization. Organizations should ensure adequate access to the covered benefit without placing undue burden on enrollees.

If a dually eligible enrollee is currently in treatment with an OTP provider with whom the plan does not have a contract, the plan should create a process to ensure continuity of care, under which the enrollee may continue to see their current OTP provider while assisting the enrollee in transitioning to a network provider.

## **Ensuring Sufficient Access to OTP Providers**

Section 1852(a)(1) of the Act and 42 CFR §422.204(b)(3) both address how an MA plan must provide basic benefits only through providers who meet the applicable requirements of Title XVIII and part A of Title XI of the Act. As the statutory definition of an OTP that is eligible to furnish the Part B OTP benefit includes that the provider is enrolled in Medicare, such enrollment is a requirement described in section 1852(a)(1) and §422.204(b)(3). However, in the interest of ensuring access to the Part B OTP benefit for MA enrollees for whom such benefits are medically necessary, CMS will consider the circumstances when determining whether enforcement action based on section 1852(a)(1) and §422.204(b)(3) is necessary. Our first priority is preventing any disruption in ongoing treatment for people with OUD.

CMS is conducting outreach encouraging OTP providers to enroll in Medicare as soon as possible. We note that the effective date of an OTP provider’s Medicare enrollment will be 30 days prior to date of application (though no earlier than January 1, 2020).

SAMHSA makes available a current list of OTP providers who meet the criteria of being SAMHSA certified and accredited by a SAMHSA-approved organization at <https://dpt2.samhsa.gov/treatment/directory.aspx> . CMS will update bi-weekly a posted list of OTP providers who have submitted applications to enroll with Medicare, as well as those whose applications have been approved (see <https://data.cms.gov/>; on that page, search for “OTP”).

## **Dually Eligible Enrollees - Cost-Sharing Liability and Protections**

In Original Medicare, the new OTP benefit will not require any cost sharing from beneficiaries. However, MA plans are permitted to apply cost sharing for OTP services in their bids. Therefore, we

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<sup>2</sup> Note that MA plans may implement cost sharing for the OTP benefit in 2020.

remind MA plans that §422.504(g)(1) requires plans to specify in their contracts with providers that dually eligible enrollees will not be held liable for Medicare Part A or Part B cost sharing when the Medicaid program is responsible for paying such amounts. This includes the Medicare Part B deductible as well as any copayments or coinsurance an MA plan may assess for OTP services.

Because many MA plans have not entered into coordination of benefit agreements with state Medicaid agencies, it is unlikely that MA plans can automatically cross claims over to a state Medicaid agency to process for the coverage of any applicable cost sharing. As a result, OTP providers would need to bill Medicaid directly for any cost sharing for which dually eligible enrollees are liable in their MA plan. This may also mean that the OTP provider has to re-code the claim if the state uses different billing codes than the MA plan uses.

### **Ensuring Customer Service Representatives are Prepared to Support Dually Eligible Enrollees**

To ensure continuity of care for those dually eligible enrollees receiving treatment from an OTP provider not currently contracted with the MA plan, plans' customer service representatives should be prepared with call center scripts and resources prior to January 1, 2020 for beneficiaries seeking assistance.

### **Conclusion**

As we implement the SUPPORT Act, our top priority is ensuring that people with OUD have access to treatment. CMS is considering strategies we can use to monitor the implementation of the OTP benefit and any issues that may impede access to medically necessary treatment of OUD.

If you have any questions, please contact your Account Manager.