Department of Health & Human Services
Centers for Medicare & Medicaid Services
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Baltimore, MD 21244-1850

CENTER FOR BENEFICIARY CHOICES

MEMORANDUM

DATE: April 11, 2008

TO: All Medicare Advantage Organizations Offering Local Coordinated Care Employer/Union-Only Group Waiver Plans (EGWPs)

FROM: Brenda Tranchida
Director
Employer Policy and Operations Group

SUBJECT: 2009 Employer Group Waiver – Modification of the 2008 Service Area Extension Waiver Granted to Certain MA Local Coordinated Care Plans

CMS has authority under sections 1857(i) and 1860D-22(b) of the Social Security Act to waive or modify requirements that hinder the design of, the offering of, or the enrollment in employment-based Medicare plans offered by employers and unions to their members.

This memorandum provides that CMS has issued a modification (effective beginning in contract year 2009) of a previously issued 2008 service area extension waiver policy for Medicare Advantage Organizations (MAOs) offering "800 series" local coordinated care plans, as described below.

Existing Employer Group Waiver Policies for "800 Series" Local Coordinated Care Plans

A coordinated care plan is defined as a plan that includes a network of providers that are under contract or arrangement with the MAO to deliver the benefit package approved by CMS. *See* 42 CFR 422.4(a)(1). Local coordinated care plans include plans offered by local preferred provider organizations (PPOs) and health maintenance organizations (HMOs).

Employer group waiver policy allows MAOs that offer local coordinated care plans to individuals in any part (e.g., county) of a State to offer "800 series" local coordinated care employer/union-only group waiver plans (EGWPs) in any area within that State or throughout the entire State under the same contract number. In order to enroll employer group beneficiaries residing outside the individual plan service area, the "800 series" plan's expanded service area must be requested and properly defined in the Health Plan Management System (HPMS). As a condition of providing this waiver, the MAO is responsible for ensuring that CMS local coordinated care provider network adequacy

requirements are met in the expanded "800 series" plan service areas and that consistent benefits are provided to an employer/union group plan sponsor's enrollees in these plans.

In November 2006, CMS granted a further expansion of the employer group service area waiver described above. Beginning in 2008, an MAO offering an "800 series" plan in a given service area (i.e., State) is permitted to request an expansion of its "800 series" local coordinated care plan service area beyond the State to provide coverage to an employer group's beneficiaries residing outside of the State. The MAO may request and receive this service area extension when the MAO, either itself or through partnerships with other MAOs, is able to meet CMS' MA and Part D provider network adequacy requirements and provide consistent benefits to those beneficiaries enrolled in these "800 series" plans. *See* 2008 Employer Group Waiver Policy – Elimination of the "Nexus" Test for PDPs, Non-Network PFFS and MSA MA plans and Service Area Extension for Certain MA Local Coordinated Care Plans, November 13, 2006.

2009 Employer Group Local Coordinated Care Plan Modification Granted

CMS is issuing a modification of the above-mentioned 2008 employer group waiver policy. Beginning with the 2009 contract year, an MAO offering a local coordinated care plan will be afforded limited flexibility, as outlined below, in a portion of an expanded "800 series" service area outside a State where it is unable to secure contracts with an adequate number of network providers to satisfy CMS' MA coordinated care network adequacy requirements that otherwise would apply. Please note that CMS is not waiving or modifying any Part D network adequacy requirements. As a condition of providing this waiver, the MAO must meet each of the following requirements:

(1) The MAO must be able to meet CMS' MA coordinated care network adequacy requirements for at least the majority of a particular employer or union group's beneficiaries enrolled in the "800 series" coordinated care plan. In those instances where the MAO cannot meet this requirement for a particular employer or union group's beneficiaries, CMS will require information, including MA network adequacy information for the particular employer or union group, to be submitted for review and approval by CMS. Further instructions concerning the submission of additional information in these instances will be outlined in future 2009 instructions;

(2) All of an employer or union group's beneficiaries, including those beneficiaries that do not have access to contracted MA network providers, must receive the same covered benefits, at the preferred in-network cost sharing for all covered benefits offered by the coordinated care plan;

(3) The MAO must provide payment to noncontract providers in accordance with the requirements of 1852(a)(2)(A) of the Social Security Act (i.e., the MAO must provide "payment in an amount so that – (i) the sum of such payment amount and any cost sharing provided under the plan is equal to at least (ii) the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B (including any balance billing under such parts [emphasis added])"). Please note that,

unlike private fee-for-service MA plans, MAOs offering local coordinated care plans have the ability to pay *more* than the required above-mentioned statutory amounts *to any particular noncontract provider* (*See also* 42 CFR 422.214; and 42 CFR 489.53(a)(2) (hospitals and other institutional providers with Original Medicare fee-for-service provider agreements that place certain restrictions on treating any Medicare beneficiaries may be subject to having those agreements terminated by CMS));

(4) The MAO must take whatever steps are necessary to ensure that beneficiaries residing in areas where the MAO is unable to secure contracts with an adequate number of a specific type of provider(s) to satisfy CMS' MA network adequacy requirements will have access to providers, including providing assistance to these beneficiaries in locating providers and/or utilizing its ability, as outlined above, to pay noncontract providers more than the statutory minimum required in section 1852(a)(2)(A) of the Social Security Act;

(5) In addition to assisting enrollees residing in non-network areas of the local coordinated care plan in finding providers who will furnish services, the MAO must also establish a program to specifically assist these enrollees in the coordination of their health care service. Areas that should be addressed in its coordination plan for its non-network enrollees are discussed in Medicare Managed Care Manual (MMCM), Chapter 4 section 120.3, "Rules for all MA Organizations to Ensure Continuity of Care," (the MMCM can be accessed at the following web link:
http://www.cms.hhs.gov/manuals/downloads/mc86c04.pdf);

(6) In order to minimize any adverse effects on beneficiaries residing in areas where the MAO is unable to satisfy CMS' MA network adequacy requirements, the MAO also must have in place an effective communication plan with employer groups prior to transitioning these employer group beneficiaries to the local coordinated care plan. This must include the following key communications: (a) ensure employer sponsors and their beneficiaries understand how the plan will work for those enrollees residing in areas where MA network providers are not available, including that noncontract providers are generally not required to accept the plan and furnish services; (b) ensure the MAO has a targeted communication strategy and provides information and assistance for beneficiaries affected by lack of access to network providers (i.e., whom they contact if they have difficulties locating a provider that will furnish services, etc.); (c) conduct targeted education and outreach to the current providers of beneficiaries affected by lack of access to network providers prior to transitioning the group to the local coordinated care plan, explaining how the local coordinated care employer group product works, how claims are submitted, etc.; and (d) assure all noncontract providers that they will receive prompt and accurate payment; and

(7) MAOs offering "800 series" local coordinated care plans that desire expanded service areas (e.g., national service areas) to utilize this modified waiver policy must submit a request for these expanded "800 series" service areas and must bid accordingly. All MAOs are required to follow the employer group plan service area request requirements contained in Section A(XIII)(E) of the 2009 Call Letter (requests to expand "800 series" service areas should be submitted by April 30, 2008) (pp. 48-49). This

process ensures that new and renewing “800 series” local coordinated care plan service areas are properly defined in HPMS to permit enrollment of beneficiaries residing within the plan’s defined service area.

We believe this 2009 modification of 2008 waiver policy is necessary to further facilitate the offering of MA local coordinated care plans by allowing employers to have a uniform benefit plan for its retirees wherever they reside. Also, the modification requested is similar to what CMS currently allows for Regional PPOs when network services are not accessible. This 2009 waiver is available to all similarly situated entities meeting the specific terms of the waiver and will not need to be granted on an individual basis. Please direct any questions concerning this waiver policy to Brenda Tranchida, Director, Employer Policy and Operations Group, at (410) 786-2001 or via email at: Brenda.Tranchida@cms.hhs.gov.