JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Medicaid Managed Care Proposed Regulations: Key Considerations for Aging Advocates

Amber Cutler
Eric Carlson
Fay Gordon

June 23, 2015

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national non-profit organization that fights senior poverty through law. We secure health and economic security for older adults of limited income and resources by preserving their access to the courts, advocating for laws that protect their rights, and training advocates around the country to serve the growing number of older Americans living in poverty.

Visit us at - justiceinaging.org

Today

Information to help comment on the proposed rule

- Brief background on the proposed rule
- Overview of 8 key areas for aging advocates
- Support with comments

#mmcreg

Brief Background on the Rule

Private Medicaid plans face sweeping new regulations under CMS proposal

By Virgil Dickson | May 26, 2015

The CMS has released a sweeping proposed rule (PDF) intended to modernize the regulation of Medicaid managed-care plans. The Medicaid managed-care population is growing rapidly, but the last regulation governing such plans was issued in 2002.

New Medicaid Rules Could Be 'Epic'

As the Baby Boomers age and enrollment surges, the feds will issue regulations for managed long-term care.

BY DYLAN SCOTT

Game Changer: CMS' Proposed Medicaid Managed Care Regulation

Sara Rosenbaum

June 10, 2015

Proposed Medicaid Managed Care Rule

- 80 Federal Register 31098 – 31297 (June 1, 2015)
- Two sections: Medicaid Managed Care and CHIP requirements

Comment Deadline: July 27, 2015

Since the publication of the Medicaid managed care regulations in 2002, the landscape for health care delivery has continued to change ... states have expanded managed care delivery systems to include seniors and persons with disabilities, as well as those who need long-term services and supports (LTSS).

Available here:
http://www.gpo.gov/fdsys/pkg/FR-2015-06-01/pdf/2015-12965.pdf

Major themes in the proposed rule

- Alignment with other programs (QHP, Medicare Advantage, private market)
- Beneficiary Protections
- Modernizing and Improving Quality of Care

More information: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/managed-care-site.html.

Aging advocates' voice needed in comment process

- Rule acknowledges shift to managed LTSS and seeks to include strong beneficiary protections. However….
  - Lack of detail
  - Overbroad deference to states
  - No clarity on monitoring or enforcement
- CMS should hear examples of on-the-ground experience with managed care for LTSS

Key Considerations for Aging Advocates

For details, see the issue brief: http://justiceinaging.org/wp-content/uploads/2015/06/Medicaid-Managed-Care-Proposed-Rule_Key-Considerations-for-Aging-Advocates.pdf.

8 Key Considerations for Aging Advocates

- Enrollment and disenrollment
- Appeals and grievances
- Defining and codifying MLTSS
- Network adequacy
- Quality measurement and Improvement
- Rebalancing
- Service authorization and care continuity
- Beneficiary Support System

From the Rule

Enrollment and Disenrollment

- Minimum 14-day enrollment period
- Notices – informational and confirmation notices
- Plan assignment should preserve provider relationships
- 90-day disenrollment period "without cause" – expanded "with cause"

80 Fed. Reg. at 31267-31268

Advocacy Considerations

Enrollment and disenrollment

- Sufficiency of 14-day enrollment period
- Adequacy of informational notices

From the Rule

Appeals and Grievances

- Align appeals & grievance procedures with Medicare Advantage and private plans
  - Terminology
  - Timelines
  - Notice Requirements

80 Fed. Reg. at 31102, 31139

Advocacy Considerations

Appeals and Grievances

- Exhaustion of internal plan appeal before right to State Fair Hearing
- Recoupment notice

From the Rule

MLTSS Definitions and Standards

- Defines LTSS broadly:
  - "services and supports … that have the primary purpose of supporting the ability of the beneficiary to live or work in the setting of their choice," which may be home, residential setting, nursing facility, etc.

- Incorporates 2013 MLTSS guidance:
  - Stated intent to revise regulations so that all MLTSS programs "operate in accordance" with the ten key principles identified in the guidance.

80 Fed. Reg. at 31141-31144

From the Rule

MLTSS Definitions and Standards (cont.)

- HCBS must comply with new HCBS settings regulations.
- State must inform MCOs about enrollees who need LTSS.
  - MCO must perform comprehensive assessment, and State may require service plan.
    - If service plan required, process must comply with person-centered planning regulations – but proposed regulation allows plan development by service provider "with enrollee participation."
- States, MCOs must develop policies for credentialing providers.

80 Fed. Reg. at 31141-31144

Advocacy Considerations

MLTSS Definitions and Standards

- Specifying LTSS services and supports.
- Requiring a service plan for a person with LTSS.
- Limiting conflicts of interest in the service planning process.
- Consumer rights in service planning.
- More detail in provider credentialing.

From the Rule

Network Adequacy

- Time and distance, with consideration of additional factors:
  - Utilization, location, ability to communicate, and physical access, etc.
  - For LTSS, also
    - Choice of provider and community integration.
    - Separate standard if LTSS provider travels to enrollee.
- Enforcement: various, such as surveys, secret shoppers, and evaluation of service calls.

80 Fed. Reg. at 31144-31148, 31156

Advocacy Considerations

Network Adequacy

- Establishing more specific standards and guidelines, i.e., times and distances.
- How usable is the requirement that states consider various factors?
- How usable are standards in real life? What types of standards might be more enforceable?

From the Rule

Quality Measurement and Improvement

- CMS with authority to require particular quality metrics, with possibility for state to request exemption.
- LTSS quality assessments must include quality of life and rebalancing.
- On-line quality rating system.
- External quality review reports to include data from any collected performance measures.

80 Fed. Reg. at 31148-58

Advocacy Considerations

Quality Measurement and Improvement

- Greater specificity on recommended performance measures.
- State's ability to rely on private accreditation.
- Input on quality of life measures.

From the Rule

Rebalancing

- "Sufficient and appropriate" capitation rates to promote community integration
- Rebalancing efforts included as a health activity in the MLR numerator
- Performance improvement program includes three areas:
  - Quality of life
  - Rebalancing and community integration outcomes
  - Self-direction (for states that offer)

80 Fed. Reg. at 31119, 31142, 31150-31151

Advocacy Considerations

Rebalancing

- Additional rate setting details
- Silence on rebalancing incentive payments
- Activities to be considered for the MLR numerator
- Guidance on rebalancing measures
- Need for *Olmstead* regulatory language

From the Rule

Beneficiary Support System

- System includes enrollment support: outreach, choice counseling, training for MCO network providers on CBOs.
- LTSS-additional assistance:
  - Access point for complaints
  - Education on grievance and appeals rights
  - Assistance navigating appeals
    - *Note:* System cannot provide SFH representation unless it uses non-Medicaid funding.
  - Review and oversight of LTSS program data

80 Fed. Reg. at 31136-31137, 31160, 31241

Advocacy Considerations

Beneficiary Support System

- Choice counseling: enrollment broker independent of the MCO.
- Prohibition on county serving as a choice counselor.
- Training MCOs on community based organizations.
- Firewalls for Medicaid-financed programs serving as the Beneficiary Support System.

From the Rule

Service authorization and care continuity

- Medically necessary services includes MCO's responsibility for LTSS services
- Utilization management standards "reflect" need for LTSS services
- Requires consistency between service authorization and person-centered plan

80 Fed. Reg. at 31126-31127

Advocacy Considerations

Service authorization and care continuity

- State and MCO authority to set medically necessary service definitions
- "Opportunity" to access benefits of community living as medically necessary services
- Utilization management "reflects" beneficiary's LTSS needs
- Service authorization consistent with person-centered plan
- Specific information on care continuity

Support with Comments

Don’t Let the Length of the Rules
Intimidate You

Focus on Key Areas

- Rule is massive in scope and proposed changes
- Focus on areas most important to your work and services
- CMS wants to hear from YOU
- Purpose of the process is to engage providers, consumers, plans, states
  - "seek comment" "seek feedback": 78 times in rule

Comments are due July 27 at 5:00 p.m. ET

Commenting is easy

Once-in-a-decade opportunity

- Rare opportunity to shape the regulations
- 2002: Last time regulations updated
- Health care delivery system (and technology) changed dramatically in last 10+ years

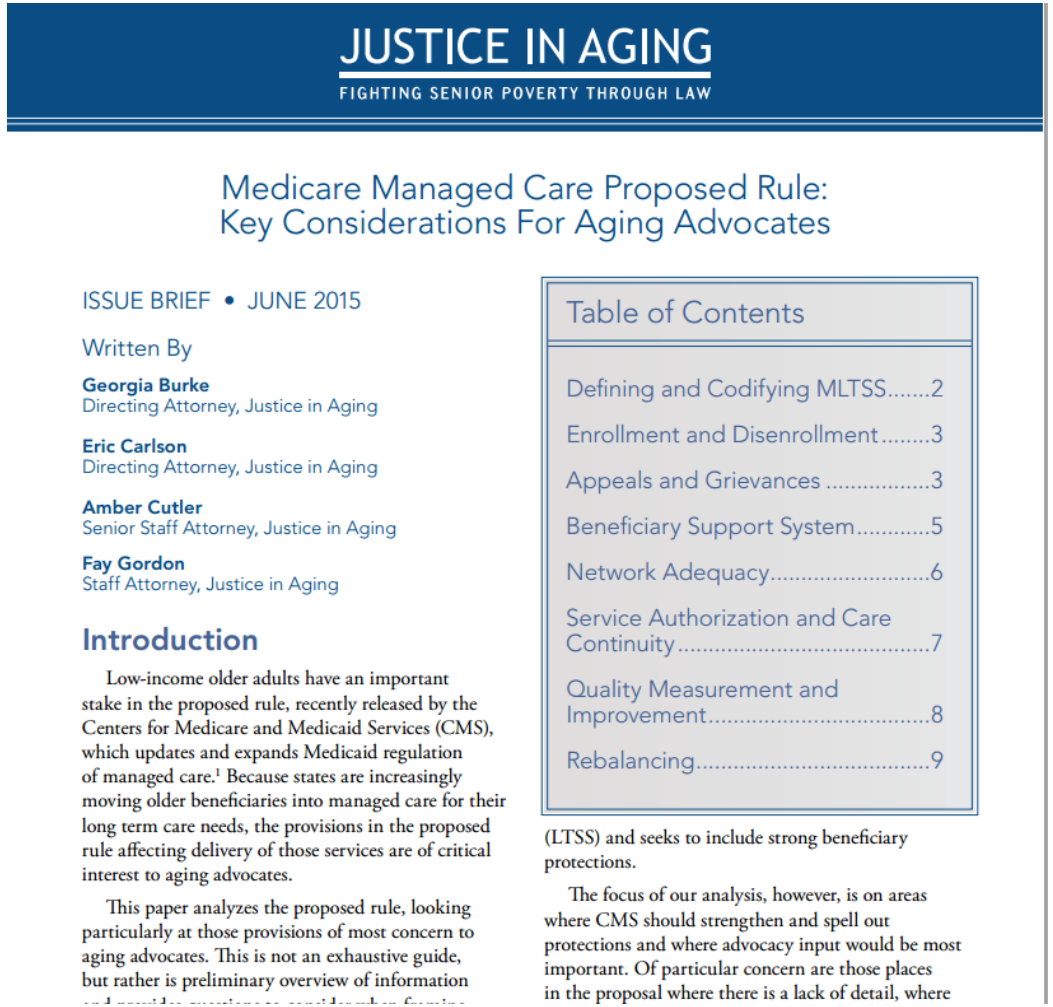
Helpful Resources

- Centers for Medicare and Medicaid Services Guidance: http://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/managed-care-site.html

- National Health Law Program: *Medicaid Managed Care: Modernized Federal Regulations Have Finally Been Released*: http://www.healthlaw.org/publications/browse-all-publications/Health-Advocate-MMC#.VYHl1flVhBd

- Families USA: *New Medicaid Managed Care Proposed Rule is Out:* http://familiesusa.org/blog/2015/05/new-medicaid-managed-care-proposed-rule-out

- Health Management Associates: *First Take on New Medicaid Managed Care Regulations*: http://www.healthmanagement.com/news-and-calendar/article/373



JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Medicare Managed Care Proposed Rule:
Key Considerations For Aging Advocates

ISSUE BRIEF • JUNE 2015

Written By

Georgia Burke
Directing Attorney, Justice in Aging

Eric Carlson
Directing Attorney, Justice in Aging

Amber Cutler
Senior Staff Attorney, Justice in Aging

Fay Gordon
Staff Attorney, Justice in Aging

Table of Contents

Defining and Codifying MLTSS.....2
Enrollment and Disenrollment.....3
Appeals and Grievances 3
Beneficiary Support System.....5
Network Adequacy.....6
Service Authorization and Care Continuity.....7
Quality Measurement and Improvement.....8
Rebalancing.....9

Introduction

Low-income older adults have an important stake in the proposed rule, recently released by the Centers for Medicare and Medicaid Services (CMS), which updates and expands Medicaid regulation of managed care.[1] Because states are increasingly moving older beneficiaries into managed care for their long term care needs, the provisions in the proposed rule affecting delivery of those services are of critical interest to aging advocates.

This paper analyzes the proposed rule, looking particularly at those provisions of most concern to aging advocates. This is not an exhaustive guide, but rather is preliminary overview of information

(LTSS) and seeks to include strong beneficiary protections.

The focus of our analysis, however, is on areas where CMS should strengthen and spell out protections and where advocacy input would be most important. Of particular concern are those places in the proposal where there is a lack of detail, where

More information available in the issue brief:

http://justiceinaging.org/wp-content/uploads/2015/06/Medicaid-Managed-Care-Proposed-Rule_Key-Considerations-for-Aging-Advocates.pdf

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Important for Aging Advocates to be Involved in the Process and Comment

Thank you

Amber Cutler, acutler@justiceinaging.org
Eric Carlson, ecarlson@justiceinaging.org
Fay Gordon, fgordon@justiceinaging.org

#mmcreg

Visit us at - justiceinaging.org