DEPARTMENT OF HEALTH & HUMAN SERVICES
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**DATE:** **June 12, 2024**
**FROM:** **Daniel Tsai, Director**
**Center for Medicaid and CHIP Services (CMCS)**

**SUBJECT:** **Addendum to 2024-2025 Medicaid Managed Care Rate Development Guide**

In January 2024, the Centers for Medicare & Medicaid Services published the 2024-2025 Medicaid Managed Care Rate Development Guide for use in setting capitation rates for rating periods starting between July 1, 2024 and June 30, 2025. This guide can be found at: 2024-2025 Medicaid Managed Care Rate Development Guide

Due to the publication of the Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality Final Rule (CMS-2439-F, 89 FR 41002) on May 10, 2024 ("final rule"), CMS is releasing this addendum to the 2024-2025 Medicaid Managed Care Rate Development Guide to detail the provisions of the final rule that take effect starting July 9, 2024. The addendum to the 2024-2025 Medicaid Managed Care Rate Development Guide is in effect as of publication of this addendum.

This addendum discusses:

- The provisions effective July 9, 2024.
- The provisions effective the first rating period beginning on or after September 7, 2024 (i.e. beginning on or after October 1, 2024).
- Guidance on including the new managed care requirements within states' rate certifications and rate amendments impacted by the publication of the final rule.

**Provisions of the final rule that take effect July 9, 2024**

The provisions of the Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality Final Rule (CMS-2439-F, 89 FR 41002), published on May 10, 2024, that take effect July 9, 2024 and are related to the managed care rate development process are listed in Attachment A of this addendum. Please note, this is not a comprehensive list of all provisions that take effect July 9, 2024; these are the provisions that are relevant for managed care rate development and documentation requirements.

**Provisions of the final rule that take effect the first rating period beginning on or after September 7, 2024**

The provisions of the Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality Final Rule (CMS-2439-F, 89 FR 41002), published on May 10, 2024,

that take effect the first rating period that begins on or after September 7, 2024 and are related to the managed care rate development process are listed in Attachment B of this addendum. Please note, this is not a comprehensive list of all provisions that take effect starting with the first rating period beginning on or after September 7, 2024; these are the provisions that are relevant for managed care rate development and documentation requirements.

**Guidance on including the new managed care requirements within states' rate certifications and rate amendments impacted by the publication of the final rule**

States must comply with all provisions of the final rule that take effect July 9, 2024, including the rate development and documentation requirements listed in Attachment A.[1] States should work with their actuaries to ensure that rate development and documentation for rate certifications and rate amendments submitted to CMS after publication of the final rule comply with these applicable provisions. CMS recognizes that the 2024-2025 Medicaid Managed Care Rate Development Guide already addresses many of the documentation requirements under the new final rule. As such, CMS will not require additional documentation as part of state's rate submission(s) to CMS for these certifications and amendments; however, CMS may ask clarifying questions as part of our review process as deemed necessary to ensure compliance with federal requirements. States must also comply with all provisions of the final rule that take effect the first rating period that begins on or after September 7, 2024, including the rate development and documentation requirements listed in Attachment B.

**Technical Assistance**

For questions related to the 2024-2025 Medicaid Managed Care Rate Development Guide or this addendum, please contact MMCratesetting@cms.hhs.gov. For questions related to the final rule, please contact ManagedCareRule@cms.hhs.gov.

[1] An exhaustive list of all provisions of the Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality Final Rule CMS-2439-F, 89 FR 41002) and the applicability dates is available at: https://www.medicaid.gov/medicaid/managed-care/downloads/applicability-date-chart-mc.pdf.

***Attachment A – Summary of Provisions of the final rule that take effect July 9, 2024***

| Citation | Description |
|---|---|
| § 438.2, 438.3(c)(1)(ii), 438.3(e)(2)(i)-(iv) and § 438.6(e) | In lieu of services and settings (ILOS):<br>- Codifies the definition of ILOS.[2]<br>- Requires that the final capitation rates must be based only upon services covered under the State plan, **ILOS,** and additional services deemed necessary to comply with parity standards from the MHPAEA.[3] |
| § 438.2, 438.6(a), 438.6(c)(1), 438.6(c)(1)(iii), 438.6(c)(2)(i), and 438.6(c)(2)(ii)(A - E), (G), (I) and (J) | State Directed Payments (SDPs):<br>- Formalizes a definition for SDPs.[4]<br>- Requires that the State no longer direct in any way the MCO's, PIHP's or PAHP's expenditures under the contract unless such contract provisions comply with the regulatory requirements of SDPs (438.6(c)), Pass-Through Payments (438.6(d)), or requirements in a specific provision of Title XIX or in another regulation implementing a Title XIX provision related to payments to providers.[5]<br>- Clarifies which SDPs need written prior approval; in addition to minimum fee schedules using State plan approved rates, minimum fee schedules using total published Medicare payment rates are exempt from written prior approval. All other SDPs require written prior approval.[6]<br>- Describes standards all SDPs must meet, including those SDPs exempt from written prior approval. |
| § 438.7(c)(4) | Rates paid under risk contracts: The State must submit to CMS for review a revised rate certification for any changes to the capitation rate per rate cell for SDPs and ILOSs not already described in the |

[2]In lieu of service or setting (ILOS) is defined at 42 CFR §438.2 as a service or setting that is provided to an enrollee as a substitute for a covered service or setting under the State plan in accordance with § 438.3(e)(2). An ILOS can be used as an immediate or longer-term substitute for a covered service or setting under the State plan, or when the ILOS can be expected to reduce or prevent the future need to utilize the covered service or setting under the State plan. CMS notes this regulatory change codifies the existing interpretation announced in the SMDL published January 4, 2023.

[3] The regulatory change is a technical change to more clearly acknowledge the inclusion of ILOS in the final capitation rates and related capitation payments. Section I.3.A. of the 2024-2025 Medicaid Managed Care Rate Development Guide already advised states that if the projected benefit costs include costs for an in lieu of service or setting, the utilization and unit costs of the ILOS must be taken into account in developing the projected benefit costs of the covered services unless a statute or regulation explicitly requires otherwise.

[4] State directed payment (SDP) is defined at 42 CFR §438.2 as a contract arrangement that directs an MCO's, PIHP's, or PAHP's expenditures under § 438.6(c). This definition codifies the existing definition that has been used by States and CMS in standard interactions and published guidance.

[5] This regulatory requirement codifies the elimination of contract provisions sometimes referred to as "grey area payments" as first described in the SMDL published January 2021. The regulatory change finalized at 42 CFR § 438.6(c)(1) furthers this original guidance and prohibits States from directing "in any way" MCO, PIHP, or PAHP expenditures unless such direction is permitted under 42 CFR § 438.6(c)(1).

[6] Existing regulations at 42 CFR § 438.7(b)(6) require that all SDPs, including those that do not require written prior approval, must be documented in the rate certification. This requirement was not changed in final rule and remains in effect.

| Citation | Description |
|---|---|
| | rate certification, regardless of the size of the change in the capitation rate per rate cell. |
| § 438.7(c)(5) | Rates paid under risk contracts: Retroactive adjustments to the capitation rates resulting from a SDP must be a result of adding or amending any SDP consistent with § 438.6(c), or a material error in the data, assumptions or methodologies used to develop the initial capitation rate adjustment such that modifications are necessary to correct the error. |

***Attachment B – Summary of Provisions of the final rule that take effect the first rating period beginning on or after September 7, 2024***

| Citation | Description |
|---|---|
| § 438.7(b)(6) | ILOS: Indicates a description of any of the contract provisions related to ILOS in 42 § 438.3(e)(2) that are applied in the contract also must be documented in the applicable rate certification.[7] |
| § 438.16[8] | ILOS: Requirements for non-IMD ILOS<br>- Provides definitions of final ILOS cost percentage, Projected ILOS cost percentage.<br>- Includes parameters for ILOS projected and final ILOS cost percentage calculations and summary report.<br>- Describes the submission and documentation requirements for projected and final ILOS cost percentage.<br>- Provides an overview of monitoring, evaluation and oversight of ILOS through retrospective evaluation.<br>- Explains the process for termination of ILOS and requirements for ILOS transition plan. |

[7] Existing regulations at 42 CFR § 438.7(b)(6) require that all special contract provisions related to payment at § 438.6 be documented in the applicable rate certification; this requirement was not changed by the final rule. The regulatory change, effective for rating periods beginning on or after September 7, 2024, will now additionally require documentation of any contract provisions related to ILOS in the applicable rate certification.

[8] These regulatory requirements codify guidance issued in the SMDL published January 4, 2023 and already included in the rate guide published in January 2024. While the effective date for these provisions is for rating periods beginning on or after September 7, 2024, CMS expects states to already be in compliance given previous guidance published in the SMDL and in the previously published rate guide(s).