Welcome to *Washington Update*, the weekly e-newsletter on the latest health care happenings in the nation's capital that affect APG's members.

Table of Contents

Potential Changes In Medicare Advantage Star Ratings May Follow SCAN Health Plan Victory In Court Case

Many Medicare Advantage (MA) plans, health care providers, and even MA beneficiaries may stand to benefit broadly from this week's court decision in a lawsuit brought by SCAN Health Plan against the Centers for Medicare & Medicaid Services (CMS). The U.S. District Court for the District of Columbia found that CMS improperly calculated SCAN's 2024 Star Rating as it implemented changes in the methodology for calculating the ratings. Depending on how CMS responds, SCAN and other plans could now see upward adjustments in these ratings that would translate into higher quality bonus payments to plans, better benefits for MA enrollees, and at least indirectly, less downward pressure on payments to providers.

The changes that CMS announced last year caused upheaval for many MA plans. As reported in *Washington Update* on October 20, 2023, MA plans' average quality scores fell from 4.14 in 2023 to 4.04 in 2024, while the share of plans earning 4 stars or more – the threshold for earning quality bonuses – fell from 51 percent in 2023 to 42 percent in 2024. The changes also meant significant hits for 5-star plans, as the number of plans in that category fell from 57 in 2023 to 31 in 2024. SCAN's 2024 star ratings decreased from 4.5 to 3.5, which the plan says cost it $250 million in bonus payments.

Waiting On CMS's Response: The court's ruling asks CMS to recalculate SCAN's quality scores for 2024, which will presumably boost them. Other MA plans, including Elevance Health, Hometown Health Plan, and Zing Health, have already filed similar suits. It is not yet clear whether CMS will choose to recalculate quality scores for SCAN alone, a broader group, or even all MA plans. But since MA plans that earn at least 4 stars receive quality payment bonuses; so-called rebates, which must be used to benefit enrollees; and a bump in the benchmarks that determine their payments from the government, the impact across the sector could be significant.

MA plans' bids for the upcoming 2025 plan year were due on June 3, and CMS is reviewing those bids now. The agency will have to decide soon about any methodology changes that would affect MA plans' quality scores – and their payment – in time for Medicare beneficiaries' annual open enrollment period, which will begin October 15, 2024.

Change Healthcare Likely To Take Primary Role In Notifying Patients About Information Breach

Modifying its earlier warnings about legal obligations to notify patients about information breaches, the Health and Human Services Department's Office of Civil Rights (OCR) last week clarified that health care providers and other "covered entities" under the federal health care privacy law can delegate that responsibility to Change Healthcare. The shift comes weeks after Change disclosed that the cyberattack earlier this year had exposed both the protected health information and personally identifiable information of a "substantial proportion of people in America" (*Washington Update*, April 26).

In an updated advisory, OCR said that all breach notifications required under the statute "may be performed by Change Healthcare," and that all "affected covered entities" should contact that organization to request that it do so. "We encourage all parties to take the necessary steps to ensure that the HIPAA breach notifications are prioritized," OCR said. But the process of notifying patients seems likely to drag on far longer. The advisory noted that Change Healthcare and its parent, UnitedHealth Group (UHG), have not yet provided official "breach notification to HHS concerning this breach," and UHG is still determining how much information was stolen. Moreover, UHG has not yet created any designated channel for covered entities to delegate breach notification responsibilities to it, so for now, the process for doing so remains unclear.

Congressional ire: In the interim, key lawmakers are pressing the federal government to boost cybersecurity requirements for health care companies. In a letter to HHS Secretary Xavier Becerra, Senate Finance Committee chair Ron Wyden (D-OR) lambasted these organizations' lax

cybersecurity practices and termed “insufficient” the department’s approach of letting them “self-regulate” on cybersecurity. Wyden is developing legislation to tighten HIPAA protections to drive enhanced cybersecurity, and earlier called on the Federal Trade Commission and the Securities and Exchange Commission to hold UHG accountable for inadequate cybersecurity that enabled the Change Healthcare cyberattack.

APG Announcements And Offerings

- Want to get more involved in APG’s Federal advocacy efforts? Join APG Advocates today.
- The submission deadline for **APG Case Studies in Excellence 2024** is June 17. Click here for details.

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Valinda Rutledge, EVP, Advocacy and Education . . . . . vrutledge@apg.org
Jennifer Podulka, Senior Vice President, Federal Policy . . . . . jpodulka@apg.org
Greg Phillips, Director of Communications . . . . . gphillips@apg.org