The Kentucky Medicaid Waiver penalizes enrollees for emergency room “misuse”

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Kentucky’s 1115 Medicaid Waiver, approved by CMS on January 12, 2018, uses small financial incentives and punishments to try to change the behavior of enrollees.[1]

Enrollees in Kentucky’s Medicaid program, Kentucky HEALTH (Helping to Engage and Achieve Long Term Health), will receive virtual accounts, called a My Rewards Account, into which credits will be placed for their positive activities related to health (completing health risk assessment - $25) and careers (passing the GED - $50). The credits can be used to pay for certain services not covered by health plans, such as vision and dental services.

However, members’ accounts will be deducted for undesirable behavior—currently defined as inappropriate use of the Emergency Room (ER). Members’ accounts can carry balances of up to negative $150 (-$150).

Let’s look more closely at ER usage and penalties.

Federal law on ERs

According to federal law, known as EMTALA,[2] a hospital’s emergency department must treat people who request care, regardless of their insurance status by, at a minimum, screening their medical condition to determine its urgency. The law defines an emergency as a medical condition severe enough that lack of immediate medical care “could be reasonably expected to result in” harm to the individual or impairment of bodily functions or organs.

Managed Care Organizations (MCOs) that contract with states must pay for emergency care, with an emergency medical condition defined as one which a “a prudent layperson, who possesses an average knowledge of health and medicine,” would feel meets the EMTALA definition.[3]

Carrots and sticks in Kentucky

Kentucky HEALTH members’ My Rewards Accounts will be deducted if they go to the ER and their MCO determines that the visit was not necessary. How big a deduction? $20 for the first “misuse,” $50 for the second, and $75 thereafter.[4]

Members who have no inappropriate ER visits in a year will receive a “reward” in their My Reward Account -- a $20 credit.

Note that the My Rewards Account is virtual currency only – members with negative account balances do not owe the state money. But members may still have to pay an emergency room co-payment of $8 for inappropriate use of an ER.[5]

Which visits are "inappropriate"?

It is hard to identify if someone's ER visit is inappropriate before examining them. Billing algorithms have shown that a percentage of people with particular symptoms had an urgent situation and another percentage did not; but population percentages cannot be applied to individuals: how do you know which of the 100 people with chest pain are having a stroke or heart attack, versus heartburn? You can't, without an examination.

Kentucky's definition

Kentucky uses a common method for determining if a member has misused the ER: diagnosis codes. Kentucky compiled a list of approximately 400 diagnosis codes that, according to the state, indicate the visit was not necessary.

The problem with lists of codes

Lists of "ER misuse" diagnosis codes are problematic for two reasons. First, many symptoms are the same for both emergency conditions and non-urgent situations. For example, the Missouri chapter of the American College of Emergency Physicians (ACEP) criticized Anthem Blue Cross/Blue Shield (BCBS) for its list of 2,000 non-emergency diagnoses, including "Chest pain on breathing"—which a prudent layperson could reasonably assume is a heart attack.[6]

Also, insurers often look at the discharge diagnosis (e.g., heartburn), which may show a non-emergency condition, rather than the presenting diagnosis, that is, the patient's complaint that brought them to the ER (e.g., chest pain). In fact, insurers have billed patients after visits the company considered non-urgent—including for abdominal pain that turned out to be a ruptured ovarian cyst. Because the condition was not life-threatening, the insurer did not consider it to be worthy of an ER visit.[7]

This practice circumvents the prudent layperson standard—if you have severe abdominal pain, chest pain, or a blinding headache, you should go to the ER, not second-guess if your condition is life-threatening. Kentucky's specifications do not identify which diagnosis or diagnoses it uses in its analysis of appropriate ER use.

Discouraging necessary care

Educating members about the financial impact of their health decisions is important in encouraging appropriate use of the ER. Kentucky's Medicaid MCOs list the My Rewards Account deductions in their handbooks. One MCO tracks frequent ER users, whom they refer to a case management program to educate those members about appropriate settings for care.

However, the experience of incurring a large financial penalty, albeit it to virtual credits, may deter Kentucky HEALTH members from seeking emergency care when they need it. Families at 100% of the Federal Poverty Level (FPL) have incomes of no more than $25,100 a year, or $483 a week. The My Rewards Accounts will be a critical source of (virtual) funds that help these enrollees access vision and dental services and over-the-counter medication; losing credits in their account after a visit to the ER may cause members, the next time they are in pain or have other symptoms, to forgo any care at all—even in situations where emergency care was warranted.

The upshot

Encouraging members to visit urgent care rather than the ER when appropriate and see their primary care providers regularly for chronic medical conditions is good. ERs are expensive, and should be used for situations that *a prudent layperson* could consider an emergency.

However, Kentucky HEALTH must ensure its efforts to reduce costs do not damage people's health by discouraging them from using the ER when they should, indeed, go. The State's Waiver evaluation plan includes surveying members to determine the percentage for whom the disincentive caused them to seek services with their primary care physician or in an urgent care setting in lieu of the emergency department.[8] But the state must also identify the percentage of members who delayed or avoided care due to fears of incurring emergency room penalties.

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[1] Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Letter to Office of Governor Matthew Bevin, approving the Commonwealth of Kentucky's section 1115 demonstration project. (Jan 2018)

[2] Emergency Medical Treatment and Labor Act. Social Security Act, Section 1867 (42 U.S.C. 1395dd). https://www.ssa.gov/OP_Home/ssact/title18/1867.htm

[3] The prudent layperson standard was initially created via the Balanced Budget Act of 1997, and later included in the Affordable Care Act (ACA).

[4] Kentucky HEALTH. Kentucky HEALTH Program: Requirements Specification. (April 2017)

[5] For families with incomes at or under 150% of the Federal Poverty Level (FPL). See: https://www.medicaid.gov/medicaid/cost-sharing/out-of-pocket-costs/index.html

[6] See: http://newsroom.acep.org/2017-05-16-Emergency-Physicians-Anthem-Blue-Cross-Blue-Shield-Policy-Violates-Federal-Law

[7] See: http://www.sent-trib.com/news/is-it-an-emergency-insurer-makes-patients-question-er-visit/article_29b23c02-c573-11e7-a52d-1747b566d23e.html The patient is from Lexington, KY.

[8] Commonwealth of Kentucky, Office of the Governor. Section 1115 demonstration waiver submission to Department of Health and Human Services. (Aug 2016)