Potential Impact of Supreme Court Ruling on Part C Benchmarks

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The Affordable Care Act (ACA) will be on trial during the Supreme Court case - California v. Texas. Oral Arguments are scheduled for November 10, 2020, with a ruling expected in June 2021. A ruling against the ACA could bring significant changes to Medicare Part C payment rates.

Background of MA Benchmarks[1]

Throughout the history of the Medicare Advantage (MA) program and its predecessor programs, numerous methodological and formula updates changed how MA payment rates are derived. Prior to the ACA's enactment, MA payments exceeded the per capita costs of the traditional Medicare Fee-For-Service (FFS) program. The ACA legislated a change in how MA payment rates are derived, tying them more directly to projected FFS costs in each county, adjusted for numerous variables including Star Ratings and the county's costs relative to the rest of the country.

The current benchmark formula is as follows:

$$\begin{aligned} &County\ Level\ Benchmark \\ &\quad = MINIMUM\ \{Projected\ County\ Level\ FFS\ Cost \\ &\quad \times (Applicable\ \% + Quality\ Bonus\ \%), \qquad Pre-ACA\ Benchmark\} \end{aligned}$$

The applicable percentage is determined based on a county's prior year quartile ranking. Through the applicable percentage, lower-cost counties receive a higher percentage, whereas higher cost counties receive a lower percentage. This adjustment essentially narrows the variance of the benchmark across counties.

Table 1 – Applicable Percentage

Quartile	Applicable Percentage
1 (Lowest Cost)	115.0%
2	107.5%
3	100.0%
4 (Highest Cost)	95.0%

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[1] Source: 2022 Advance Notice, Pages 13-34

The quality bonus percentage (QBP) is determined based on a plan sponsor's star rating. The star rating program was implemented with the ACA to incentivize plans to provide better care through scoring different quality measures. Plans with four or more stars receive a 5% QBP, plans with less than four stars receive 0%, and new plans under a new parent organization and low enrollment contracts receive a 3.5% bonus. In addition, certain qualifying counties can receive a double bonus (10% or 7%).

The star rating also determines a plan's rebate percentage. When plans submit a bid, the savings is determined by the 1.0 benchmark minus the 1.0 bid. The savings is then multiplied by a plan's rebate percentage:

- 4.5 and 5 star plans – 70%
- 4 and 3.5 star plans – 65%
- Plans less than 3.5 stars – 50%
- New under new parent org and low enrollment – 65%

Plans use rebates to buy down Part B and Part D premiums or offer supplemental benefits above and beyond Traditional Medicare FFS costs.

Finally, the benchmark cap is applied, which compares this calculation to the pre-ACA benchmark calculation. The lesser of the two values will be the final benchmark.

Background of California v. Texas[2]

February of 2018, Texas and 20 other states sued the federal government, seeking to have the entire ACA ruled unconstitutional. The main argument is regarding the individual mandate; however, they further say that without the individual mandate and a specific severability clause, the rest of the ACA is unconstitutional, including the Medicare payment provisions.

If the ruling is in favor of Texas and the court invalidates these Medicare payment provisions as non-severable from the rest of the ACA, the benchmark formula could change to rely solely on the pre-ACA formula. Although this would eliminate the QBP and the applicable percentage, it would also remove the benchmark cap, effectively causing no change if the benchmark currently hits the cap or an increase in payments if the benchmark is less than the cap. Should the MA Benchmark revert to pre-ACA calculations, the change is expected to go into effect no earlier than plan year 2023 because the ruling is expected after 2022 bid submission.

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[2] https://affordablecareactlitigation.files.wordpress.com/2019/05/5c-us-brief.pdf, Accessed on November 5, 2020

Estimated Change to MA Benchmarks

We used the October 2020 MA enrollment file[3] and the published 2020 Part C benchmarks[4] and star ratings to calculate the difference in current plans' benchmarks if Pre-ACA rates were used.

The results show a significant impact on benchmark rates. While the average expected change for MA plans is an increase of about $93 PMPM, the results vary depending on a plan's service area and star rating.

Table 2 illustrates the difference in benchmarks by star rating. Plans with less than four stars (no QBP) are expected to increase more than plans that are greater than or equal to 4 stars. Since the pre-ACA benchmarks do not vary by star rating, the plans with lower star ratings will experience the greatest increase in benchmarks.

Table 2 – Benchmark Change by Star Rating

Stars Cat.	Current	Pre-ACA	Difference
4 or more	$982.69	$1,054.35	$71.66
Up to 3.5	$944.99	$1,059.54	$114.55
New/Low[5]	$992.88	$1,085.88	$93.00
Total	$973.58	$1,066.76	$93.18

Table 3 displays the benchmark changes by quartile. The highest quartile is expected to see an increase over three times the lowest quartile. This is primarily driven by high cost and high enrollment counties like Los Angeles and Miami-Dade, which are expected to see an increase of $116.82 and $604.34, respectively.

Table 3 – Benchmark Change by Quartile

Quartile	Current	Pre-ACA	Difference
1	$915.49	$963.34	$47.85
2	$976.25	$1,010.79	$34.54
3	$974.02	$1,061.58	$87.57
4	$1,026.30	$1,183.37	$157.07

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[3] https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MCRAdvPartDEnrolData

[4] 2020 Final Call

[5] New plans and low enrollment plans make up about 3% of the total enrollment in 2020

Other Implications

The change in benchmarks are not the change in revenue to MA Organizations. As previously mentioned, the the rebate percentage (i.e., the proportion of the savings in the bid that the plan gets to retain and apply to additional benefits) is tied to the star rating program. If the ACA is repealed in its entirety, the rebate perentage could increase to the pre-ACA amount of 75%, regardless of a plan's star rating. The impact of the change in rebate percentage is not included in this analysis.

Given this change will increase plan revenue, it could mean richer plan offerings and lower premiums.

Outside of the ACA law, CMS has the authority to change the Total Beneficiary Cost (TBC) thresholds. TBC thresholds limit significant increases or decreases to member cost share from one year to the next, especially if a plan experiences an increase or decrease in QBP. There is potential that CMS would change the TBC threshold to ensure plans are appropriately sharing the increase in revenue with members.

It is also worth noting that benchmarks for Employer Group Waiver Plan's will change given they are based on the county level benchmarks.

Conclusion

The Supreme Court ruling could vastly change how MA plans are paid should the Court rule in favor of Texas with a full invalidation of the ACA. Given the resulting increase to MA payments, we suspect other MA payment reductions will again be considered by Congress as MA payments would revert to the previous pre-ACA levels. Should the Court rule in favor of California or that the Medicare payment provisions are severable, the MA benchmark and payment formulas likely remain unchanged.

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