

services through a continuing care retirement community in which the MA plan enrollee was a resident at the time of admission to the hospital. A continuing care retirement community is an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period; or

(3) The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from the hospital.

(4) If an MA organization elects to furnish SNF care in the absence of a prior qualifying hospital stay under § 422.101(c), then that SNF care is also subject to the home skilled nursing facility rules in this section. In applying the provisions of this section to coverage under this paragraph, references to a hospitalization, or discharge from a hospital, are deemed to refer to wherever the enrollee resides immediately before admission for extended care services.

(c) *Coverage no less favorable.* The posthospital extended care scope of services, cost-sharing, and access to coverage provided by the home skilled nursing facility must be no less favorable to the enrollee than posthospital extended care services coverage that would be provided to the enrollee by a skilled nursing facility that would be otherwise covered under the MA plan.

(d) *Exceptions.* The requirement to allow an MA plan enrollee to elect to return to the home skilled nursing facility for posthospital extended care services after discharge from the hospital does not do the following:

(1) Require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under Part A for Medicare beneficiaries not enrolled in the MA plan.

(2) Prevent a skilled nursing facility from refusing to accept, or imposing conditions on the acceptance of, an enrollee for the receipt of posthospital extended care services.

[68 FR 50857, Aug. 22, 2003, as amended at 70 FR 4723, Jan. 28, 2005]

#### § 422.134 Reward and incentive programs.

(a) *Definitions.* As used in this section, the following definitions are applicable:

*Incentive item* means the same things as reward item.

*Incentive(s) program, reward(s) program, and R&I program* mean the same thing as rewards and incentives program.

*Incentive(s), R&I, and rewards and incentives* mean the same things as reward(s).

*Qualifying individual* in the context of a plan-covered health benefit means any plan enrollee who would qualify for coverage of the benefit. In the context of a non-plan-covered health benefit, qualifying individual means any plan enrollee.

*Reward and incentive program* is a program offered by an MA plan to qualifying individuals to voluntarily perform specified target activities in exchange for reward items.

*Reward item (or incentive item)* means the item furnished to a qualifying individual who performs a target activity as specified by the plan in the reward program.

*Target activity* means the activity for which the reward is provided to the qualifying individual by the MA plan.

(b) *Offering an R&I program.* An MA plan may offer R&I program(s) consistent with the requirements of this section.

(c) *Target activities.* (1) A target activity in an R&I program must meet all of the following:

(i) Directly involve the qualifying individual and performance by the qualifying individual.

(ii) Be specified, in detail, as to the level of completion needed in order to qualify for the reward item.

(iii) Be health-related by doing at least one of the following:

(A) Promoting improved health.

(B) Preventing injuries and illness.

(C) Promoting the efficient use of health care resources.

(iv) Uniformly offer any qualifying individual the opportunity to participate in the target activity.

(v) Be provided with accommodations consistent with the goal of the target

activity to otherwise qualifying individuals who are unable to perform the target activity in a manner that satisfies the intended goal of the target activity.

(2) The target activity in an R&I program must not do any of the following:

- (i) Be related to Part D benefits.
- (ii) Discriminate against enrollees. To ensure that anti-discrimination requirements are met, an MA organization, in providing a rewards and incentives program, must comply with paragraph (g)(1) of this section and must not design a program based on the achievement of a health status measurement.

(d) *Reward items.* (1) The reward item for a target activity must meet all of the following:

- (i) Be offered identically to any qualifying individual who performs the target activity.
- (ii) Be a direct tangible benefit to the qualifying individual who performs the target activity.
- (iii) Be provided, to the enrollee, such as through transfer of ownership or delivery, for a target activity completed in the contract year during which this R&I program was offered, regardless if the enrollee is likely to use the reward item after the contract year.

(2) The reward item for a target activity must not:

- (i) Be offered in the form of cash, cash equivalents, or other monetary rebates (including reduced cost sharing or premiums). An item is classified as a cash equivalent if it either:
  - (A) Is convertible to cash (such as a check); or
  - (B) Can be used like cash (such as a general purpose debit card).
- (ii) Have a value that exceeds the value of the target activity itself.
- (iii) Involve elements of chance.

(3) Permissible reward items for a target activity may be reward items that:

- (i) Consist of “points” or “tokens” that can be used to acquire tangible items.
- (ii) Are offered in the form of a gift card that can be redeemed only at specific retailers or retail chains or for a specific category of items or services.

(e) *Marketing and communication requirements.* An MA organization that offers an R&I program must comply with all marketing and communications requirements in subpart V of this part.

(f) *R&I disclosure.* MA organization must make information available to CMS upon request about the form and manner of any rewards and incentives programs it offers and any evaluations of the effectiveness of such programs.

(g) *Miscellaneous.* (1) The MA organization’s reward and incentive program must comply with all relevant fraud and abuse laws, including, when applicable, the anti-kickback statute and civil monetary penalty prohibiting inducements to beneficiaries. Additionally, all MA program anti-discrimination prohibitions continue to apply. The R&I program may not discriminate against enrollees based on race, color, national origin, including limited English proficiency, sex, age, disability, chronic disease, whether a person resides or receives services in an institutional setting, frailty, health status, or other prohibited basis.

(2) Failure to comply with R&I program requirements may result in a violation of one or more of the basis for sanction at § 422.752(a).

(3) The reward and incentive program is classified as a non-benefit expense in the plan bid.

(i) If offering a reward and incentive program, the MA organization must include all costs associated with the reward and incentive program as an administrative cost and non-benefit expense in the bid for the year in which the reward and incentive program operates.

(ii) Disputes on rewards and incentives must be treated as a grievance under § 422.564.

[86 FR 6096, Jan. 19, 2021]

**§ 422.135 Additional telehealth benefits.**

(a) *Definitions.* For purposes of this section, the following definitions apply:

*Additional telehealth benefits* means services:

(1) For which benefits are available under Medicare Part B but which are