

U.S. House and Senate Notification
Thursday, December 10, 2009

To: Congressional Health Staff

From: Amy Hall
Director, Office of Legislation
Centers for Medicare & Medicaid Services

Re: CMS Issues Final Rules on the Appeals Processes for Medicare Fee-for-Service (FFS) and Medicare Part D

This week, the Centers for Medicare & Medicaid Services (CMS) announced that two final rules were published in the December 9, 2009 Federal Register Notice on the appeals procedures for the Medicare program. The first rule, CMS-4064-F, finalizes the provisions of the March 8, 2005 interim final rule, which has been in effect since May 2005. This rule finalizes the implementing regulations for all levels of the Medicare Fee-for-Service (FFS) appeals process and explains how the new procedures will be put into practice. In addition, it makes technical revisions where warranted to improve the clarity and simplicity of the regulation.

The second rule, CMS-4127-F, establishes formalized procedures for Medicare Part D appeals at the administrative law judge (ALJ) and Medicare Appeals Council (MAC) levels to ensure consistent protection of beneficiary appeal rights. In addition, this rule institutes procedures for Part D enrollees to request reopenings of coverage determinations and appeals decisions. The new Medicare Part D appeals process largely incorporates the Medicare FFS appeals process with necessary modifications related to the Part D program. The final rule includes most of the provisions of the March 17, 2008 proposed rule with some technical revisions. The following key provisions are included in this final rule:

- Establishing a 10-day expedited review process at the ALJ and MAC levels to ensure timely decisions in cases where application of the standard decision making timeframe may seriously jeopardize a beneficiary's life, health, or ability to regain maximum function;
- Requiring a remand to the Part D Independent Review Entity, rather than the plan sponsor, if an enrollee wishes to have evidence of a change in condition considered for the first time at the ALJ or MAC level;
- Specifying that ALJs shall review appeals de novo; and
- Not applying the 10-day evidence submission time frame to unrepresented beneficiaries.

A copy of the first rule, CMS-4064-F, is available at <http://edocket.access.gpo.gov/2009/pdf/E9-28707.pdf>.

A copy of the second rule, CMS-4127-F, is available at <http://edocket.access.gpo.gov/2009/pdf/E9-28710.pdf>.

If you have questions, please contact the CMS Office of Legislation. Thank you.