



CMS Enforcement Actions



***Michael DiBella, Director
Division of Compliance
Enforcement***

***Medicare Parts C & D
Oversight & Enforcement
Group***

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Enforcement Topics

Topics that will be covered:

- What does CMS consider an “enforcement action”?
- What types of violations warrant enforcement actions?
- What effects do enforcement actions have on organizations?
- What can your organization do to avoid an enforcement action?

What is an Enforcement Action?

- It is an action taken by CMS as a result of a sponsor's substantial and/or repeated non-compliance with the terms of its contract with CMS.
- Actions may be in the form of a:
 - Civil Money Penalty
 - Intermediate Sanction
 - Termination (technically a contract action)
- Imposed at the contract level.
- All of these actions come with appeal rights.

CMS Compliance Continuum

Through monitoring and auditing, CMS detects and requires sponsors to correct non-compliance by issuing notices of non-compliance. Serious or sustained non-compliance can result in enforcement actions.

The continuum can include any one of the following actions:

Monitoring:

- Monitoring of day to day operational activities (short/long term)

Compliance Actions:

- Notices of Non-Compliance
- Warning Letters
- Corrective Action Notices

Enforcement Actions:

- Intermediate Sanctions
- Civil Money Penalties

Contract Actions:

- Termination
- Non-Renewal

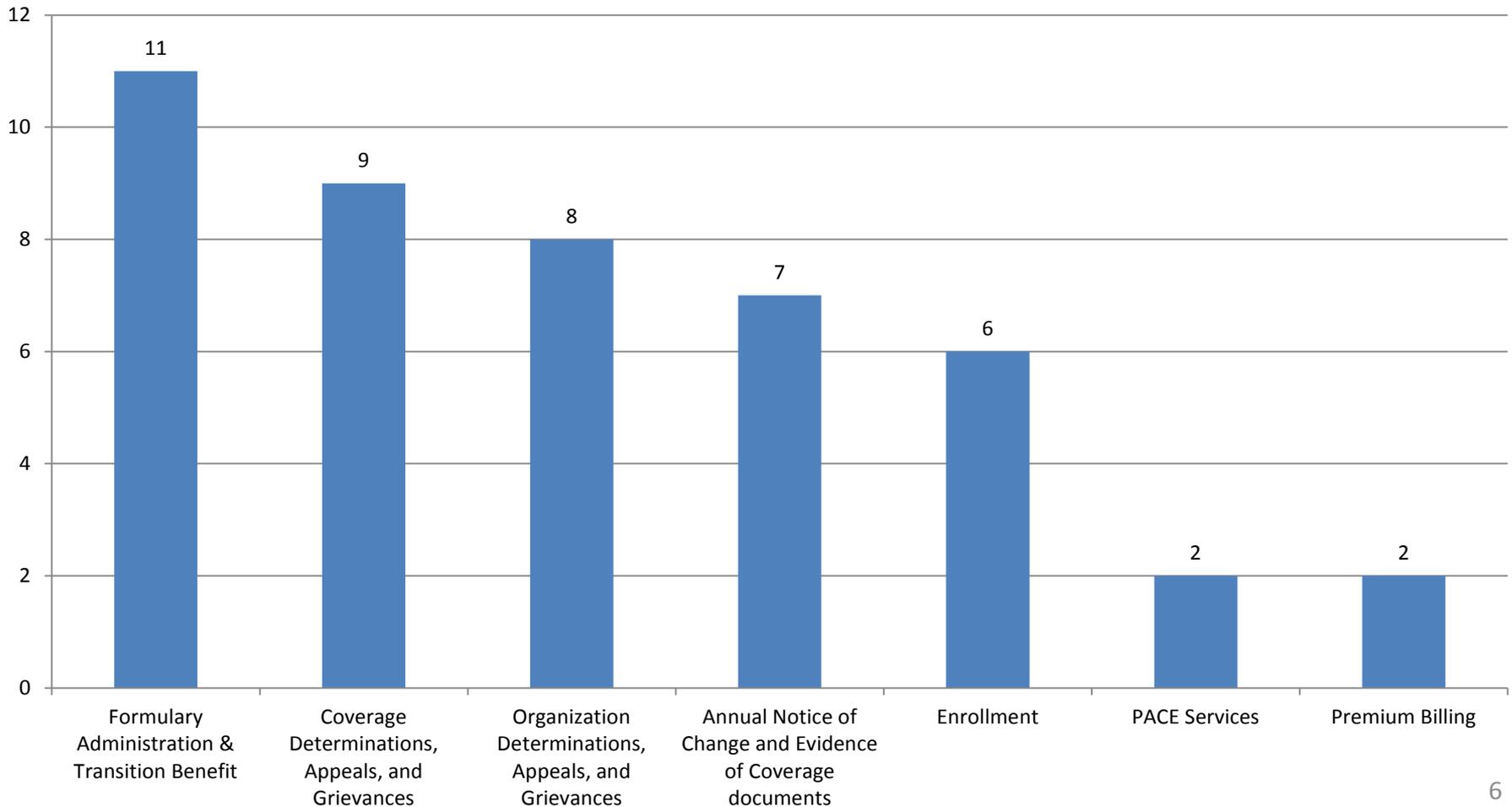
What Types of Violations Warrant Enforcement Actions?

Those that result in the following beneficiary outcomes:

- Inappropriate delay or denial of access to health services or medications.
- Incorrect premiums charged or unnecessary costs incurred.
- Inaccurate or untimely information provided about health and drug benefits.

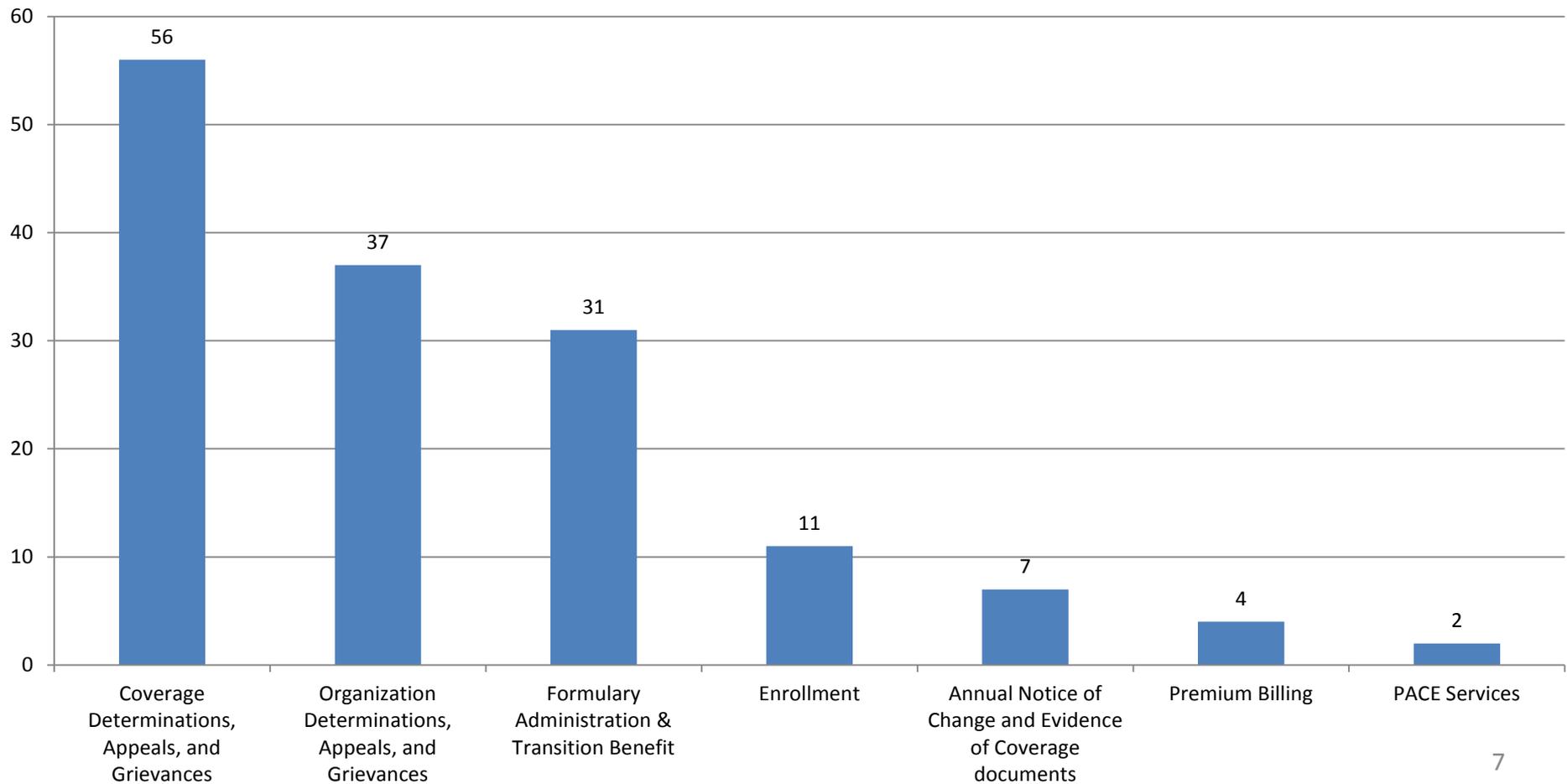
Enforcement Actions Since 2012

Number of Organizations with Enforcement Actions By Area



Enforcement Actions Since 2012

Frequency of Violations By Area in Enforcement Actions



Civil Money Penalties (CMPs)

CMP amounts:

- Up to \$25,000 per determination
- Up to \$25,000 per enrollee adversely affected (or with the substantial likelihood of being adversely affected)
- Up to \$10,000 for each week that a deficiency remains uncorrected after the week in which CMS issues a CMP.

CMPs cont.

In determining the amount of the penalty, CMS considers:

- The nature of the conduct;
- The degree of culpability of the sponsoring organization;
- The harm which resulted or could have resulted from the conduct of the sponsoring organization;
- The financial condition of the sponsoring organization; and
- The history of prior offenses by the sponsoring organization or principals of the organization.

CMPs Since 2012

- CMS has imposed 24 CMPs, totaling \$4,571,905 for various contract violations.
- These CMPs ranged from \$23,410 to \$2,175,000.
- One violation may effect multiple contracts, resulting in a CMP for each contract.

Intermediate Sanctions

Intermediate sanctions are designed to be corrective in nature. Sanctions require a sponsor to take a “time-out” and fix its deficiencies. There are three forms of intermediate sanctions.

Marketing Sanctions

suspend a plan sponsor’s ability to market to any Medicare beneficiaries (even the sponsor’s enrollees)

Enrollment Sanctions

suspend a plan sponsor’s ability to enroll any Medicare beneficiaries (new or existing) into its MA, MA-PD, or PDP contracts

Payment Sanctions

suspend CMS payments to the plan sponsor for any beneficiaries enrolled after the sanction becomes effective

Sanctions cont. - Special Election Period

- Beneficiaries in plans that are under CMS sanctions are eligible for a Special Election Period (SEP).
- CMS may require that the sponsor send a notice to all beneficiaries, informing them of the sponsor's sanction and their eligibility for the SEP.
- Beneficiaries may elect another MA plan or Original Medicare.

How Long Does a Sanction Last?

- As long as it takes for the sponsor to demonstrate to CMS that the deficiencies have been corrected and are not likely to recur.
- Sanctions over the past 5 years:
 - 8 sanctions: 215, 240, 242, 243, 255, 351, 418, 637 days (**Average of 325 days**)
 - 5 sanctions ended in termination or mutual termination
 - Currently, 2 sanctions still in effect

Termination

Termination may be imposed for a variety of reasons, but most notably when an organization:

- Has failed substantially to carry out the contract and the contract violations are causing harm to beneficiaries
- Is carrying out the contract in a manner that is inconsistent with the effective and efficient implementation of the program

CMS can notify Sponsor any time during the year

- Non-expedited – provide 90 days notice, appeal delays termination
- Expedited – immediate notice and termination, appeal does not delay termination
 - Imminent and serious risk to the health of beneficiaries

Enforcement Actions Effects on Organizations

- Potential to Reduce Star Rating
- Tarnished reputation/branding impact
- Loss in profits
- Decreased enrollment
- Employee turnover
- Demand on time of senior leadership

Coordination with Other Oversight Entities

- The Center for Program Integrity and the Department of Justice.
 - For issues related to fraud, waste, and abuse
- The Office of Inspector General
 - Submission of false or fraudulent data to CMS or participation in fraudulent or abusive activities.

How to Avoid Enforcement Actions?

Implement an effective compliance program that touches every facet of your organization's operations and that of its delegated entities.

Compliance starts at the top...

- Compliance Expertise on Board/Audit or Compliance Committee of Board
- Board agenda includes real-time compliance issues as a standing agenda item.
- Board minutes document detailed discussion and resolution of compliance issues
- CEO and Board regularly educated on and acts upon compliance issues (e.g. CMS-issued warning letters, notices of non-compliance, CTM complaints, etc.)

Compliance Officer Best Practices

- Meet frequently with managers and attend business operations meetings
- Observe operations personnel in their job functions
- Survey employees about attitudes towards compliance; conduct focus groups, inquire during exit interviews
- Celebrate compliance achievements and improvements of operational areas

Organizational Best Practices

- Conduct risk assessments to identify areas of weakness and institute corrective actions upon detection.
- Internal auditing, tracking of corrective actions, and reporting results to the Compliance Committee
- Quantifiable measurement of effectiveness of compliance program and compliance throughout organization (scorecards, etc.)
- Management and staff held accountable for compliance results (performance evaluations, incentives, etc.)
- Disciplinary actions publicized to encourage compliance

Organizational Best Practices

- Compliance issues analyzed to identify trends
- Incentivize compliance
- Centralized oversight of contracted entities, and compliance terms (including monetary consequences for violations) included in FDR contracts

Evaluating the Effectiveness of Your Compliance Program

Follow an issue through its lifecycle:

- Was the proper reporting structure in place to receive and respond to the issue?
- Was there a prompt response to the issue?
- Were the appropriate personnel notified and/or involved with the issue?
- Was the issue resolved (including corrective action plan)?
- Were necessary systemic changes implemented to ensure issue does not recur?
- Was periodic monitoring and auditing performed to ensure corrective action was effective in resolving the issue?

Evaluating Effectiveness

Indicators that you do not have an effective program:

- Compliance reports not provided regularly to the Board/chief executive
- Little oversight over FDRs (no formal monitoring/auditing)
- No confidential / anonymous reporting
- Employees afraid to report compliance issues
- Little monitoring of operations; no or infrequent audits
- Responds to incident but no systemic fix
- Discipline inadequate / inconsistent
- Allegations of non-compliance not effectively investigated
- No systematic/overt efforts by senior leadership to build a strong ethical culture

Questions?

For inquiries related to Enforcement or Compliance Programs:

Parts_C_and_D_CP_Guidelines@cms.hhs.gov

Also, please see the Part C and Part D Compliance and Audits webpage where all of the enforcement actions are posted:

<http://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/Part-C-and-Part-D-Enforcement-Actions-.html>