Consequences of Untimely Coverage Determination and Redetermination Decisions

Amber Casserly, MPP
Division of Appeals Policy, Medicare Enrollment and Appeals Group, CMS

Kevin Stansbury, EJD
Deputy Director, Division of Compliance Enforcement, MOEG, CMS

June 16, 2016

Overview

- Current regulations and CMS guidance
- Why untimely coverage determination (CD) and redetermination (RD) processing matters
- CMS' current and future efforts to address this issue

Current CMS Requirements

Timeframe Requirements

- 42 CFR §§ 423.568(b), 423.572(a), 423.590(a), and 423.590(d)
  Part D plan sponsors are required to make coverage determinations and redeterminations, notify the enrollee, and effectuate the decision within required timeframes.

Failure to Meet Timeframes

- 42 CFR §§ 423.568(h), 423.572(d), 423.590(c), and 423.590(e)
  If a Part D plan sponsor fails to effectuate and notify the enrollee of its determination within the appropriate timeframe, this constitutes an adverse coverage determination/redetermination, and the plan must forward the enrollee's request to the Independent Review Entity (IRE) within 24 hours of the expiration of the adjudication timeframe.

Chapter 18 Prescription Drug Benefit Manual

- Effect of Failure to Provide Timely Notice
  - Section 40.4 – Standard Coverage Determinations
  - Section 50.6 – Expedited Coverage Determinations
  - Section 70.7.1 – Standard Redeterminations
  - Section 70.8.2 – Expedited Redeterminations
  - Section 70.10 – Redeterminations
- Instructions for Preparing the Case File for the IRE
  - Sections 70.30 and 70.40

Why Untimely CD and RD Processing Matters

- Failure to meet timeframes adversely affects beneficiaries by inappropriately delaying access to needed prescription drugs and/or creating a financial hardship
- Since the start of Part D, CMS has monitored auto-forward rates with the expectation of reduced volume over time as Part D plan sponsors gained program experience
- High auto-forward rates also waste valuable resources by creating an extra workload for the IRE
- When a plan auto-forwards an excessive number of late cases to the IRE, it creates potential processing and access delays for all beneficiaries in the appeals process

Why Do Plans Have Excessively High Auto-Forward Rates?

- Excessive auto-forward rates are the result of repeated non-compliance with required adjudication timeframes
- To assist plans in improving timeliness and, therefore, reducing auto-forward rates, CMS has analyzed several recent instances of excessively high volumes of untimely cases

Why Do Plans Have Excessively High Auto-Forward Rates? (cont.)

- Our analysis shows correlation with one or more of the following problems:
  - Inadequate systems, including excessive reliance on manual processes, system errors, or use of multiple platforms that do not effectively communicate with one another
  - Lack of internal controls, including oversight of delegated entities, inadequate training of staff on CMS requirements and/or plan P&Ps, and failure to ensure sufficient staffing to handle case volume
  - Failure to implement P&Ps that are compliant with CMS requirements, e.g., tolling all coverage determination requests pending receipt of missing information and/or repeatedly misclassifying requests as exceptions
  - Excessive auto-forwards can be the result of one-time events or of problems that occur over an extended period of time

2017 Call Letter

- There continues to be an increase in the number of cases plan sponsors auto-forward to the IRE
- Through the 2017 Call Letter, CMS notified Part D plan sponsors that beginning in 2017, we will increase the level and severity of the compliance and enforcement actions imposed on plans that substantially fail to comply with requirements for coverage determinations and redeterminations

CMP Regulatory Authority

- CMS will impose Civil Money Penalties (CMPs) on plan sponsors with high auto-forward rates
- Pursuant to 42 CFR § 423.752(c)(1)(i), CMS has the authority to impose CMPs when a sponsor substantially fails to comply with the requirements of Subpart M
- CMP amount available for this violation:
  - Up to $25,000 per enrollee adversely affected (or with the substantial likelihood of being adversely affected)

Auto-Forward Analysis

- The IRE submits reports to CMS that identify the number of cases it receives as a result of plan failure to meet the adjudication timeframe
- Based on program experience and quarterly data going back to CY 2013, CMS conducted an analysis to determine an appropriate outlier threshold of auto-forward rates
- As noted in the 2017 Call Letter, this threshold is calculated per 10,000 enrollees and aligns with the 2016 Star Ratings 2-star cut-point
- Contracts with fewer than 800 enrollees and less than 10 appeals per quarter are excluded from the analysis

Auto-Forward Analysis (cont.)

- Applying this methodology to first quarter 2016 auto-forward rate data, 103 contracts were evaluated to determine which ones exceeded the pre-determined threshold
- Eight of the 103 contracts from the sample (representing five parent organizations) were identified as outliers

New Processes for Excessive Auto-Forwards

- Based on the outlier analysis, CMS will begin identifying non-compliant plan sponsor contracts that meet or exceed the pre-established auto-forward threshold rate
- CMP calculations will be based on a per enrollee basis
- CMPs will be issued once per quarter at the parent organization level

Conclusion

- CMS considers excessive Part D IRE auto-forwarding to be a serious beneficiary access issue
- Part D plan sponsors are expected to devote sufficient resources to internal or external processes that ensure coverage determinations and redeterminations are processed timely before receiving a compliance or enforcement action from CMS
- Beginning in 2017, CMS will continue to raise the consequences for ongoing noncompliance in this area

Questions

For questions regarding the current Part D auto-forward policy, email: PartD_Appeals@cms.hhs.gov

For questions regarding the enforcement actions and outlier analysis, email: Parts_C_and_D_CP_Guidelines@cms.hhs.gov