



MEDICARE ENROLLMENT & APPEALS GROUP

DATE: September 18, 2020

TO: All Medicare Advantage Organizations

FROM: Jerry Mulcahy
Director, Medicare Enrollment and Appeals Group

SUBJECT: Non-Contract Provider Access to Medicare Administrative Appeals Process

The purpose of this memorandum is to remind Medicare Advantage organizations (MAOs) of the applicability of the administrative appeals process at 42 C.F.R. Part 422 Subpart M if a non-contracted provider (NCP) who has furnished a service to an enrollee requests reconsideration of an organization determination.

The Centers for Medicare & Medicaid Services (CMS) has received inquiries that indicate MAOs, in some cases, may not be properly processing appeal requests from NCPs. Specifically, CMS has been advised that MAOs are not always providing proper administrative appeal rights to NCPs after revising an organization determination.

Pursuant to 42 C.F.R. § 422.566(b)(3), an MAO's "refusal to provide or pay for services, in whole or in part, including the type or level of services, that the enrollee believes should be furnished or arranged for by the MA organization" is an organization determination. Also, see: "Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance," §§ 40.1 and 50.1.1 concerning payment (claims) as organization determinations and appeals. A non-contracted provider who has furnished a service to an enrollee can be a party to an organization determination, in accordance with 42 C.F.R. § 422.574(b). Thus, pursuant to 42 C.F.R. § 422.578, a non-contracted provider may request that an organization determination be reconsidered by the plan. Even reconsideration requests submitted by NCPs that relate to the type or level of service furnished to the enrollee must be reviewed in accordance with the administrative appeal processes outlined in 42 C.F.R. Part 422, Subpart M.

We are addressing in this memorandum examples of some situations which have come to our attention that constitute an organization determination. In such situations, an NCP who is the enrollee's assignee must be afforded full administrative appeals rights in accordance with 42 C.F.R. Part 422 Subpart M:

- **Diagnosis code/DRG payment denials.** An NCP submits a claim to an MAO. The MAO initially approves the claim, which is considered a favorable organization determination (see 42 C.F.R. 422.566(b)). The MAO later reopens and revises the favorable organization determination and denies the DRG code on the basis that a different DRG code should have been submitted and recoups funds.

- Downcoding. An MAO approves coverage for inpatient services from a NCP, which is considered a favorable organization determination (see 42 C.F.R. 422.566(b)). The MAO later reopens and revises the favorable organization determination (e.g., retrospective review) and determines the enrollee should have received outpatient services.
- Bundling issues and disputed rate of payment. Pre- and post-pay bundling and global payment determinations. For example, denial of procedure codes -- as mutually exclusive to another paid procedure code, or due to inclusion in a previously paid global surgical package.
- Level of care or rate of payment denials. Payment of a reduced fee schedule amount for a course of treatment. For example, a provider bills a procedure code for a visit but the MAO reimburses based on a lower level of care.

Further, even if the MAO partially pays for coverage (i.e., denies coverage as requested but approves or pays for part of the service), an NCP who according to 42 C.F.R. §422.574(b) is a party to the organization determination may request reconsideration under the Medicare administrative appeals process; an NCP does not need to receive zero payment to request a reconsideration or to otherwise access the Subpart M appeals process.

CMS appreciates that MAOs engage in fraud, waste, and abuse prevention efforts, and CMS recognizes that plans have a legitimate need to occasionally reopen cases. However, when a claim is reopened, the act of reopening constitutes a new organization determination, and the MAO must issue an organization determination to the NCP with instructions on how to appeal consistent with the regulations under 42 C.F.R. Subpart M. MAOs are reminded that, pursuant to 42 C.F.R. § 405.982, an adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal. MAOs are also reminded that 42 C.F.R. § 422.616(d) states that once an entity issues a revised determination or decision, any party to the revised determination or decision may file an appeal.

In contrast to the examples discussed above, if a disagreement is limited to the amounts a NCP could collect if the beneficiary were enrolled in original Medicare pursuant to § 422.214(a)(1), this issue would be subject to the plan's internal payment dispute process.

Any questions you may have on this subject should be directed to the Part C Appeals Mailbox at <https://appeals.lmi.org/DAPMailbox>.