



MEDICARE ADVANTAGE GROUP

MEMORANDUM

DATE: May 28, 2008

TO: All Medicare Advantage Organizations offering Private Fee-for-Service Plans

FROM: David A. Lewis /s/
Director, Medicare Advantage Group

SUBJECT: PFFS plans cannot impose prior authorization and referral requirements in their contract year 2009 PBP; Additional guidance on prior notification rules and 2008 operational policy.

A retrospective review of the benefit packages for contract year 2008 Private Fee-For-Service (PFFS) plans has revealed that many PFFS plans indicated prior authorization and/or referral requirements for enrollees. CMS policy does not allow PFFS plans to restrict beneficiary access to health care services. This policy was reiterated on Page 44 the 2009 Call Letter. The Call Letter restates CMS' policy that PFFS plans may not require enrollees or providers to obtain authorization from the plan prior to receiving a service as a condition for covering the service. PFFS plans also cannot require enrollees to obtain referrals in order to receive medically necessary, plan-covered services. If a member receives a medically necessary, plan-covered service from a qualified provider, without prior authorization from the plan or a referral, the PFFS plan must pay for the service. These requirements apply to both network (partial and full) and non-network PFFS plans. We note that the enrollee or provider, at their choice, may request an advance coverage determination before the service is provided to confirm that the service is medically necessary and covered by the plan.

Contract Year 2008

The Plan Benefit Package (PBP) software did not have the data entry capacity to allow PFFS plans to enter a prior notification cost sharing reduction amount for service categories. Therefore, PFFS plans may have used the prior authorization fields to indicate prior notification. PFFS plans also used the referral fields to indicate referral requirements. We are reminding PFFS plans that they may not use prior authorization or referral as a condition for covering health care services.

Contract Year 2009 PBP

Since PFFS plans may not impose prior authorization or referral requirements on enrollees or their providers, plans must select the appropriate responses in the PBP software to indicate that they **do not** require authorization or referral for any of the service categories in Sections B and C of the PBP software. PFFS plans also cannot use the Notes fields to describe either of these

requirements. CMS will verify during the bid review process that all PFFS plans have not indicated authorization and/or referral requirements for any service categories and will require a resubmission of your Bid(s) if you have indicated authorization and/or referral requirements in benefit packages. We anticipate modifications to the PBP software for contract year 2010 to ensure that the authorization and referrals questions are no longer available to PFFS plans.

Additional Guidance on Prior Notification Rules

We stated on Page 44 of the 2009 Call Letter that PFFS plans can establish voluntary prior notification rules, where the plan charges lower cost sharing for a health care service if the enrollee or provider notifies the plan before the service is furnished. We also described how prior notification works. PFFS plans cannot require the enrollee or provider to prior notify the plan as a condition for covering a service; however, they are permitted to encourage beneficiaries to voluntarily prior notify the plan by offering lower cost sharing.

For contract year 2009, the PBP software will not allow PFFS plans to indicate whether they have voluntary prior notification rules. Consequently, PFFS plans with prior notification rules will have to describe the rules in the Notes section of the PBP. PFFS plans will also be able to describe the rules in the 2009 Evidence of Coverage.

Similar to guidance we provided in the 2006 Call Letter for PPOs, PFFS plans must first market their cost sharing that applies in the absence of voluntary prior notification without referring to "reductions" or "rewards" that might be available if plan prior notification rules are voluntarily followed by enrollees or providers. In other words, PFFS plans must first tell potential and current enrollees what the cost sharing will be if the enrollee receives covered services without first notifying the plan. Once that baseline information is provided, PFFS plans can then explain the cost sharing reductions they offer to enrollees who participate in the voluntary plan prior notification option. We encourage PFFS plans to prominently display reduced cost sharing that is available to enrollees who voluntarily participate in prior notification procedures. PFFS plans may not impose "penalties" (such as denying covered benefits, imposing fines, or monetary penalties) for non-participation in voluntary prior notification protocols.

You may direct any questions regarding this guidance to Marty Abeln at Marty.Abeln@cms.hhs.gov. We appreciate your cooperation in this matter.