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CENTER FOR DRUG AND HEALTH PLAN CHOICE

TO: All Medicare Advantage Organizations, 1876 Cost Organizations, and Part D Sponsors

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SUBJECT: Pharmacy and Provider Access during a Federal Disaster or Other Public Health Emergency Declaration

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This guidance addresses recent questions CMS has received with respect to emergency access to Part C provider networks and Part D medications during states of emergency. In this letter we both clarify policy and remind Part D sponsors and Medicare Advantage organizations (MAOs) of their obligations as provided in the 2010 Final Call Letter, Medicare Managed Care Manual, and Prescription Drug Benefit Manual.

Some MAOs and Part D sponsors have asked for further clarification on when emergency access policies go into effect and at what point are they no longer in effect. Generally, our policy applies during times when there is a potential for a significant disruption in care to occur – for instance, an emergency need for health care services, a limited number of operational pharmacies, limitations on transportation and travel, and – in the case of Part D – disruption of U.S. mail.

As we explain below, for MAOs and cost plans, there are requirements that must be adhered to when the Secretary has exercised specific waiver authority. Absent the exercise of this authority, if an appropriate authority (as indicated below) has declared a disaster, MAOs and cost plans are expected to take certain actions during disaster or emergency periods. Generally, under the Part D program, sponsors are expected to lift certain pharmacy edits and apply their out-of-network policy in the event of a disaster or emergency.

We advise MAOs, cost plans, and Part D sponsors to consult the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) website (see <http://www.fema.gov/hazard/dproc.shtm>) for information about the disaster or emergency declaration process and the distinction between types of declarations. Organizations should also

consult the [Department of Health and Human Services \(DHHS\)](#) or [Centers for Medicare & Medicaid Services \(CMS\)](#) websites for any detailed guidance that may be posted.

Access to Part C Provider Network

If, in addition to a Presidential declaration of a disaster or emergency under the Stafford Act or National Emergencies Act, the Secretary of Health and Human Services declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary of Health and Human Services has the right to exercise her waiver authority under Section 1135 of the Social Security Act. If the Secretary exercises her Section 1135 waiver authority, detailed guidance and requirements will be made available.

In the event of a Presidential emergency declaration, a Presidential (major) disaster declaration, a declaration of emergency or disaster by a Governor, or an announcement of a public health emergency by the Secretary of Health and Human Services – but absent an 1135 waiver by the Secretary – cost and MA plans are expected to:

1. Allow Part A/B and supplemental Part C plan benefits to be furnished at specified non-contracted facilities (note that Part A/B benefits must, per 42 CFR 422.204(b)(3), be furnished at Medicare certified facilities);
2. Waive in full, or in part, requirements for authorization or pre-notification;
3. Temporarily reduce plan approved out-of-network cost sharing amounts;
4. Waive the 30-day notification requirement to enrollees provided all the changes (such as reduction of cost sharing and waiving authorization) benefit the enrollee.

Typically, the source that declared the disaster will clarify when the disaster or emergency is over. If, however, the disaster or emergency time frame has not been closed 30 days from the initial declaration, and if CMS has not indicated an end date to the disaster or emergency, plans should resume normal operations 30 days from the initial declaration.

Access under Part D

In the event of a Presidential emergency declaration, a Presidential (major) disaster declaration, a declaration of emergency or disaster by a Governor, or an announcement of a public health emergency by the Secretary of Health and Human Services – and these circumstances create a disruption in access to covered Part D drugs – we expect sponsors to lift their “refill-too-soon” edits. Part D sponsors may exercise some operational discretion as to how these edits are lifted during a disaster or emergency as long as access to Part D drugs is provided at the point-of-sale. For instance, Part D sponsors could implement an edit that is readily resolvable at the point-of-sale through the use of a pharmacist override code. We also expect Part D sponsors to allow an affected enrollee to obtain the maximum extended day supply, if requested and available at the time of refill.

We expect that Part D sponsors will continue to lift these edits until the termination of a public health emergency or the end of a declared disaster or emergency. In the case of a public health emergency, it terminates when it no longer exists or upon the expiration of the 90-day period beginning from the initial declaration, whichever occurs first. For major disasters or emergencies, Part D sponsors should pay particular attention to the closure of disaster or emergency incident periods listed on FEMA's web site

<http://www.fema.gov/news/disasters.fema>, noting that in circumstances in which the incident period has not officially closed 30 days from the initial declaration, Part D sponsors may consider extending the implementation of the edits but are not required to do so. However, if sponsors choose to remove the edits, they need to work closely with enrollees who indicate that they are still displaced or otherwise impacted by the disaster or emergency.

In the absence of a major disaster, emergency or a public health emergency declaration, Part D sponsors may consider lifting the edits – for instance, in advance of an impending disaster – if they determine it is appropriate to do so to ensure pharmacy access.

At all times, and especially in disaster and or public health emergency situations, Part D sponsors must ensure, consistent with Chapter 5 of the Medicare Prescription Drug Manual, that their enrollees have adequate access to covered Part D drugs dispensed at out-of-network pharmacies when those enrollees cannot reasonably be expected to obtain covered Part D drugs at a network pharmacy, and when such access is not routine.