

Auto-forwarding Coverage Determination Cases to the Independent Review Entity (IRE AF) Policy, Monitoring and Compliance Panel

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

Gregory Bottiani
Division of Benefit Purchasing and
Monitoring, Medicare Drug Benefit
and C & D Data Group, CMS

Leila Zaharna
Division of Compliance Enforcement,
Medicare Oversight and Enforcement
Group, CMS

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Presentation Overview

Today's presentation will discuss:

- Current regulations and CMS guidance on timeliness and effectuating cases
- Compliance and enforcement actions related to Part D auto-forwards

Current CMS Requirements

- For standard coverage determinations, Part D sponsors have no more than 72 hours to notify the enrollee of the decision after receipt of the request. For expedited coverage determinations, the sponsor has no more than 24 hours to notify the enrollee.
- For standard redeterminations, sponsors have no more than 7 calendar days to notify the enrollee, and no more than 72 hours for expedited redeterminations.

42 CFR §§ 423.568(b), 423.572(a), 423.590(a), and 423.590(d)

Polling Question

A plan has missed the timeframe for making a decision and notifying the enrollee. When should the case file be auto-forwarded to the Independent Review Entity?

- a. Within 72 hours of expiration of the timeframe (standard) or within 24 hours of expiration of the timeframe (expedited)
- b. Within 24 hours of the expiration of the applicable standard or expedited timeframe
- c. 7 days
- d. 14 days

Current CMS Requirements

- A sponsor's failure to process and notify the enrollee of its determination in the appropriate timeframe constitutes an adverse decision, and the sponsor must "auto-forward" the enrollee's request to the Independent Review Entity (IRE) within 24 hours of the expiration of the applicable adjudication timeframe.

§ 423.568(h), 423.572(d), 423.590(c), and 423.590(e)

Polling Question

My plan has just discovered a large number of cases that were approved, the beneficiaries were notified of the decision, but all of these cases were effectuated past the adjudication timeframes. What actions should we take?

- a. Continue processing the cases normally
- b. Auto-forward the cases to the IRE as soon as possible
- c. Immediately notify your CMS account manager of the cases, and ask for guidance on what steps to take next.

Best Practices

- For instances where large numbers of cases are found to be effectuated untimely, contact your account manager before auto-forwarding those cases to the IRE. This will allow CMS to work with the plan in determining which cases should be auto-forwarded.

Frequently Asked Question

My plan has made timely oral notification for an adverse coverage determination, but the written notification was untimely. Are we required to auto forward this case to the IRE?

FAQ Response

Yes. In this case, even though oral notification was made in a timely manner, the required written notification was made after the timeframes expired, and the case must be auto-forwarded to the IRE.

Assessment of Civil Money Penalties

- Pursuant to 42 CFR § 423.752(c)(1)(i), CMS has the authority to impose Civil Money Penalties (CMPs) when a sponsor substantially fails to comply with the requirements related to coverage determinations, appeals and grievances in accordance with § 423.509(a)(4)(ii).
- CMS has determined that an excessively high auto-forward rate demonstrates a substantial failure to comply with the requirements (in Subpart M) to process coverage determination and redetermination decisions within the required timeframes.
- Therefore, CMS is imposing Civil Monetary Penalties (CMPs) on plan sponsors with excessively high auto-forward rates.

CMP Process for Excessive Auto-Forwards

- Beginning with data from the first quarter of 2017, CMS will begin issuing CMPs on a quarterly basis to sponsors that fail to meet the established threshold.
- Based on an analysis of the previous year's data, CMS has set the 2017 outlier threshold at a rate of 15 or more auto-forwards per 10,000 beneficiaries per quarter.
 - Sponsors with an enrollment size of less than 800, fewer than 10 IRE cases/appeals per quarter, and fewer than 10 auto forwarded cases are excluded from this analysis.
 - CMS will continue to analyze the auto-forward data and may modify this threshold as needed on an annual basis to address changes in industry performance.

CMP Process for Excessive Auto-Forwards

Type of Action	Outlier Threshold
Enforcement Action	
Automatic CMP Recommendation	<p>“800/10/10/15” rule applied.</p> <p>Any sponsor meeting these criteria is automatically recommended for a CMP.</p> <ol style="list-style-type: none">1. The first time a sponsor’s contract meets the criteria and they receive a CMP, they get one consecutive quarter to improve their performance before being considered for another CMP. After that subsequent quarter, if they ever meet the criteria again, they will be eligible to receive another CMP.

CMP Process for Excessive Auto-Forwards

- Based on the outlier analysis, CMS will begin identifying non-compliant contracts that meet or exceed the pre-established auto-forward threshold rate.
- CMP calculations will be based on a per enrollee basis.
 - Up to \$37,396 (number is adjusted annually per 45 CFR § 102) per enrollee adversely affected (or with the substantial likelihood of being adversely affected)
- 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 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.

Compliance Actions for Excessive Auto-Forwards

- CMS also takes compliance actions when a plan sponsor's auto-forward rate exceeds a threshold established by CMS.
- Compliance thresholds announced in a December 16, 2016, HPMS memo titled *Compliance and Enforcement Actions Related to Part D Auto-Forwards*.
- CMS may modify the compliance thresholds annually based on an analysis of the data from the previous year in order to address changes in industry performance.

2016 Compliance Actions

- Notice of Non-Compliance to any sponsor with ten or more IRE cases/appeals, ten or more auto-forwarded cases, and an auto-forward rate of ten or higher per 10,000 members during any quarter in 2016
- One notice issued for non-compliance in any of the first three quarters
- One notice issued for non-compliance in the fourth quarter

2017 Compliance Actions

- Same thresholds as 2016
- Quarterly actions
- Escalated actions beginning in first quarter

Compliance Escalation

Type of Action	Outlier Threshold
Enforcement Action	
Automatic CMP Recommendation	<p>“800/10/10/15” rule applied.</p> <p>Any sponsor meeting these criteria is automatically recommended for a CMP.</p> <ol style="list-style-type: none">1. The first time a sponsor’s contract meets the criteria and they receive a CMP, they get one consecutive quarter to improve their performance before being considered for another CMP. After that subsequent quarter, if they ever meet the criteria again, they will be eligible to receive another CMP.
Enforcement Action Referral for a CMP	<p>“800/10/10/10” rule applied.</p> <p>Escalation based on receiving a previous quarter’s request for CAP.</p>

Compliance Escalation (cont.)

Type of Action	Outlier Threshold
Compliance Actions	
Notice of Non-Compliance (NONC)	"10/10/10" rule applied. (Contract has at least 10 IRE appeal cases, at least 10 appeals were auto-forwarded cases, and at least an auto-forwarded rate of 10 per 10,000 members.)
Warning Letter	"10/10/10" rule applied. Escalation based on receipt of NONC in either of the previous two quarters.
Warning Letter with a request for a business plan	"10/10/10" rule applied. Escalation based on receipt of Warning Letter in either of the previous two quarters.
Corrective action plan (CAP)	"10/10/10" rule applied. Escalation based on receipt of Warning Letter with request for a business plan in either of the two previous quarters.

Polling Question

A sponsor that has a rate of 10 auto-forwards per 10,000 enrollees for four consecutive quarters and does not meet any of the exclusion criteria will be referred for an enforcement action if their rate is 8 auto-forwards per 10,000 enrollees in the subsequent quarter.

- a. True
- b. False

Trending Toward Improvement

- Good news! Since the *Calendar Year (CY) 2017 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter*, CMS has seen a significant decrease in the number of auto-forwarded cases.

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.

Contacts

- For questions about compliance or enforcement actions contact PartD_Monitoring@cms.hhs.gov
- For questions about Part D timeliness and auto-forward policy questions contact PartD_Appeals@cms.hhs.gov
- For questions related to CMPs contact Parts_C_and_D_CP_Guidelines@cms.hhs.gov

Questions?
