

MEDICARE ADVANTAGE NEWS

CMS Issues First Fine for High Rate of IRE Auto-Forwarding

CMS earlier this year said it would begin imposing quarterly civil monetary penalties (CMPs) on Part D plans with excessively high rates of “auto-forwarding” to the Independent Review Entity (IRE). Now, CMS is making good on that promise with the first issuance of a CMP and more are likely to follow.

According to a July 14 letter from Vikki Ahern, director of the Medicare Parts C and D Oversight and Enforcement Group, CMS intends to impose a CMP on Merit Health Insurance Co. in the amount of \$59,600 for its Prescription Drug Plan’s inordinately high rate of coverage determinations and redeterminations auto-forwarded in the first quarter of 2017. The letter specifies that Merit’s “adjusted” auto-forward rate was 33.04 per 10,000 enrollees and “is considered an outlier when compared to other sponsors.” Consistent with star rating exclusion methodology, the following auto-forwarded appeals were excluded from the rate calculation: reopened appeals, administrative law judge remanded appeals, and appeals the IRE remanded back to plans.

When making coverage determinations or redeterminations, Part D sponsors are required to notify enrollees of their decisions within specified timeframes, such as within 72 hours of receiving a request for a standard coverage determination. When a plan has missed the window, it’s considered an adverse decision, and sponsors are expected to “auto-forward” the case to the IRE within 24 hours. CMS has not only observed consistently high volumes of auto-forwarded cases — which it flagged as an area of concern in the 2017 draft Call Letter for MA and Part D plans issued in 2016 — but has repeatedly witnessed through audits a failure to appropriately auto-forward cases to the IRE within the required timeframe (*MAN 5/25/17, p. 3*).

Others May Be Eligible for Similar Fines

During a session of the CMS MA and PDP Spring Conference in May 2017, officials outlined a new policy issuing automatic CMPs on a quarterly basis to sponsors that fail to meet an established auto-forwarding threshold (*MAN 5/25/17, p. 1*). That threshold was set at a rate of 15 or more auto-forwards per 10,000 beneficiaries per quarter. Sponsors with fewer than 800 enrollees, fewer

than 10 IRE cases/appeals per quarter and fewer than 10 auto-forwarded cases are excluded from the analysis, which began with data from the first quarter of 2017.

“In our experience, an auto-forward rate of fewer than 10 is far more common (as can also be seen by looking at recent Stars data releases),” observes Derek Frye, practice leader for audit and compliance with the Burchfield Group. “However, of the plans that we examine auto-forward rates in depth, about 10% have auto-forward rates closer to what Merit experienced. It is possible that the adjustments that CMS made to Merit’s data would bring that overall number down, but it is still a substantial number.” As a result, Burchfield estimates that at least a dozen other plans are likely eligible for the same type of CMP, he says.

Merit Health, which is a subsidiary of Magellan Health, Inc., has until Sept. 13 to request a hearing to appeal CMS’s determination. “The Merit Health board of directors and senior leadership took the CMS determination very seriously and immediately authorized additional resources, and implemented corrective action processes, such as system changes and additional staff training, to assist with making timely decisions, and decrease the level of cases that need to be auto-forwarded to the Independent Review Entity,” a Magellan spokesperson tells AIS Health. “We continue to work in full cooperation with CMS to deliver the highest caliber of care to our beneficiaries.”

“Although CMS established the auto-forward process in order to protect beneficiaries from further delays in access to medications, the auto-forward process should not be a substitute for sponsors making coverage determinations and redeterminations within the required adjudication timeframes,” Ahern reminded Merit Health in the letter. “Each sponsor should develop and implement processes that will help it make decisions timely and avoid high levels of cases that need to be auto-forwarded to the IRE.”

The letter to Merit was posted last month to the Part C and Part D Enforcement Actions page at www.cms.gov along with several other new notices, but reflects the only auto-forward CMP issued so far.

Contact Frye at dfrye@burchfieldgroup.com. ↩