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Centers for Medicare & Medicaid Services (CMS) Issues Warning on Medicare Part D Billing for Hospice Patients

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Hospices will be expected to be more vigilant in their decisions to cover and pay for prescription medications covered under their Medicare hospice per diem payment.

On December 6, the Centers for Medicare & Medicaid Services (CMS) released a 13-page memorandum (Memorandum) to all Medicare Part D plan sponsors and Medicare hospice providers to clarify the criteria for determining payment responsibility for drugs furnished to Medicare hospice beneficiaries.[1] While the policy clarifies the broad care obligations of hospices, the Memorandum is also aimed at Part D sponsors to ensure that their payment decisions for drugs provided to hospice beneficiaries are correct under Medicare policy. The Memorandum also warns hospices about the use of narrow formularies, noting that hospices are required either to ensure that the formularies are sufficiently broad to cover drugs needed for the palliation of their patients' terminal conditions and symptoms or to provide off-formulary medications when appropriate. The net result of this CMS clarification is that hospices will be expected to be more vigilant in their decisions to cover and pay for prescription medications covered under their Medicare hospice per diem payments.

Background

In its Memorandum, with instructions effective on March 1, 2014, CMS expressed concern that drugs, particularly analgesics, covered under the Medicare Part A Hospice per diem payment are being billed inappropriately to the Medicare Part D prescription drug benefit, which in many instances results in duplicate payment to a Medicare hospice. Notably, the Memorandum was issued by CMS's Medicare Part D, Chronic Care, and Program Integrity groups. Through an outside contractor, CMS analyzed 2010 Medicare Part D enrollment and payment statistics, finding that Medicare Part D plans paid claims for analgesics (e.g., pain medication) for 14.9% of hospice beneficiaries. The analysis also demonstrated that the billing for analgesics was concentrated among hospice providers that were primarily for profit, new, and/or rural. In fact, just 10% of hospices nationally accounted for nearly 51% of Medicare Part D claims for pain medications. Of those claims, more than 50% were for hospice beneficiaries residing in nursing facilities.

Clarification of Payment Responsibility

Medicare pays hospices an all-inclusive per diem rate for the provision of all services related to an eligible beneficiary's underlying terminal condition. For instance, if a beneficiary is suffering from pain or illness as a result of the terminal condition, the hospice is required by Medicare to provide medications used for the palliation of the patient's symptoms, and the hospice is responsible under its per diem rate to furnish those drugs related to the patient's terminal illness. However, for conditions unrelated to the beneficiary's terminal illness, the beneficiary is entitled to coverage of curative procedures and medications by traditional Medicare or Part D. CMS has identified an ongoing practice whereby hospices allow contracted pharmacies to bill Part D plans for drugs not on the hospices' formularies, even though financial responsibility for the drugs, if related to a terminal illness, rests on the hospices or the beneficiaries. In its Memorandum, CMS states that it views a hospice's responsibility to provide care as broad and that "hospices are required to provide virtually all the care that is needed by terminally ill individuals." Because the designation of what care is unrelated to a terminal illness is not prescribed by the statute or regulations, but rather is driven by a beneficiary-specific analysis, CMS leaves it to individual hospices and their Medicare Administrative Contractors to make those coverage determinations.

Since 2012, CMS has encouraged Part D sponsors to place prior authorization requirements on four categories of prescription drugs: (1) analgesics, (2) anti-nauseants (anti-emetics), (3) laxatives, and (4) anti-anxiety drugs. It has also authorized pay-and-chase methods of Part D claim adjudication. However, CMS notes that it recently became aware that the duplicative payment issue goes beyond just the four classes of drugs specified in earlier guidance, and that many hospices were not viewing the hospice benefit as holistically as the agency does.

In the policy clarification memorandum, CMS alerts Part D sponsors and hospices that drugs covered under Part D for hospice beneficiaries will be "extremely rare," and "[t]herefore, the sponsor should place beneficiary-level [prior authorization] requirements on all drugs for hospice beneficiaries to determine whether the drugs are coverable under Part D." In those rare instances where a Medicare hospice beneficiary may be prescribed a medication for a condition unrelated to the underlying terminal illness, CMS "expect[s] that the hospice provider or prescriber will immediately provide, to the Part D sponsor, the written documentation necessary to satisfy the [prior authorization]." Because CMS expects Part D coverage of drugs furnished to hospice patients to be rare, it would not expect frequent use of prior authorization by Part D sponsors. Additionally, if hospices are slow to electronically file with CMS contractors the completed hospice Notice of Elections that would have otherwise put Part D sponsors on notice that a beneficiary had elected hospice, a Part D sponsor may seek a refund directly from the hospice without involving the dispensing pharmacy. In instances when a beneficiary agrees to be financially responsible for the furnishing of a nonformulary drug but the drug is nevertheless billed to Part D, the sponsor may seek recovery directly from the beneficiary for the noncovered drug.

CMS Independent Reviewer

CMS is exploring the possibility of incorporating an independent review function as part of the prior authorization process. Specifically, the Memorandum sets forth a mechanism for the resolution of disputes between a hospice provider and a Part D sponsor as to whether a drug is for a condition unrelated to the terminal illness:

- If the hospice provider and Part D sponsor disagree, then once an independent review process is implemented, either may contact the CMS independent reviewer for a determination of drug payment responsibility.

- A medical review process would be initiated to determine whether the drug is reasonable and necessary and related to the underlying terminal illness, and thus whether the hospice is responsible for payment. If an item was waived through election of the hospice benefit, it is the beneficiary's responsibility and, if unrelated to the underlying terminal condition, can be paid through the Part D sponsor.

CMS would expect Part D sponsors and hospice providers to accept the independent reviewer determination as "binding." The Memorandum notes that the details of the independent review process will be outlined in future guidance. In the interim, however, CMS expects hospices and Part D sponsors to work cooperatively with each other to coordinate benefits and provide and obtain written documentation to fulfill the prior authorization requirements. It also expects Part D sponsors to flag questionable claims and request retrospective determinations of responsibility by the independent reviewer once that process is implemented. Finally, the Memorandum also explains that a beneficiary who disagrees with an independent reviewer's determination may utilize the Medicare fee-for-service appeals process if the determination relates to Part A or B coverage, and the Part D appeals process if the determination relates to Part D coverage.

Conclusion

Ultimately, this CMS policy clarification requires hospice providers to more thoroughly consider and better document whether conditions and prescribed medications are unrelated to underlying terminal illnesses. CMS articulates that because of the human body's interconnectedness, the underlying terminal illness is typically the epidemiological cause of a broad spectrum of presenting symptoms, and the hospice is responsible for providing palliative care for those symptoms. While certain conditions, such as pain caused by a broken bone, may be unrelated in CMS's view, most other symptoms are intended to be treated as part of the Medicare hospice per diem rate. Thus, it is important that hospice providers develop policies, formularies, and robust documentation practices to address medication management related to patients' terminal illnesses. Failure to do so will put hospices at financial risk of refund demands and possibly other program integrity sanctions.

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[1]. View the Memorandum here.

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