



AMERICAN COLLEGE OF PHYSICIANS
INTERNAL MEDICINE | *Doctors for Adults*

July 10, 2008

Kerry N. Weems
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201
Attention: CMS 4131-P

Dear Acting Administrator Weems:

The American College of Physicians (ACP), representing over 126,000 internal medicine physicians and student members, appreciates this opportunity to comment on the Medicare Program: Revisions to the Medicare Advantage and Prescription Drug Benefit Program; Proposed Rule. The College believes that the regulatory changes contained in this proposal, which have been informed by the Centers for Medicare and Medicaid Services' (CMS) almost two years of experience with the drug benefit implementation, serve to clarify participating plans procedural requirements, improve the accuracy of information provided to beneficiaries and provide increased protections to these beneficiaries from deceptive and/or otherwise adverse practices.

While this comment letter will focus on proposed regulatory changes that directly affect our members, the College specifically commends CMS for proposing the following additional changes:

- Improvements in the marketing, enrollment and care delivery requirements of special needs plans (SNP).
- Removal of known full benefit dual eligibles (FBDE) who are known to be enrolled in a qualifying employer group plan from default auto enrollment.
- Increased protections regarding the inappropriate assessment of a late enrollment penalty on beneficiaries.
- Increased beneficiary protections regarding inappropriate plan enrollment and disenrollment.
- Inclusion of increased beneficiary options regarding retroactive premium collections and repayment.

- Improved marketing guidelines with more clearly defined civil monetary penalties for non-compliance to help ensure beneficiaries receive accurate information from adequately trained brokers and agents.

The College offers the following comments in greater detail on issues that more directly affect our members:

Ensuring Eligibility to Elect an MA Plan for Special Needs Individuals

The College takes note of the Industry comments received by CMS that Special Needs Plans (SNP) sometimes experience significant delays in obtaining the treating physician's verification of a beneficiary's chronic condition that is required prior to enrollment into a chronic care SNP. As a result, CMS is proposing an additional means of obtaining this verification—the use of an approved pre-enrollment qualification assessment tool that can be followed by post-enrollment confirmation by any physician—to avoid the delay in enrollment encountered by some beneficiaries.

The College strongly believes that chronic condition SNP eligibility should be verified by the beneficiary's treating physician. The treating physician has the most knowledge regarding the beneficiary's medical condition, and also can provide any guidance requested by their patient regarding the suitability of the specific chronic needs SNP relative to their medical needs. The use of the alternative pre-enrollment qualification assessment tool and procedure proposed by CMS should only be employed in those few instances in which the SNP can document an unsuccessful effort on their part to obtain pre-enrollment verification from the treating physician. In such instances, the enrollment procedure should include written verification from the enrollee that s/he understands the consequences of enrolling in the plan, including any possible loss of access to her/his current treatment team. In addition, there should be a post-enrollment verification requirement from a physician actually treating the individual.

Further, it is the College's opinion that the enrollment procedure into any Medicare Advantage plan should always include written verification from the enrollee that s/he understands the consequences of enrolling in the plan, including any possible loss of access to her/his current treatment team. Our observation is that these plans do a good job touting the benefits of enrollment (e.g. reduced or no premium), but often leave out mentioning some of the possible negative consequences of enrollment (e.g. restrictions in choice of medical provider.)

Finally, it is suggested that reimbursing physicians for responding to these chronic condition verification requests from the SNPs (e.g. develop an appropriate payment code) would significantly reduce any current delays being encountered by the Industry. These requests only add to the many other typically unpaid for administrative demands in the already hectic physician practice setting.

Medicare Advantage (MA) Medical Savings Accounts (MSA) Transparency

The College understands from the proposed rule that MA organizations offering MSA will be required to provide their enrollee with quality and cost information concerning services in the plan's service area. In order to ensure the usefulness and accuracy of this data, the College recommends that guidelines for this reporting be required similar to those proposed by the Consumer Purchaser Discloser Project's Patient Charter for Physician Performance Measurement, Reporting and Tiering Programs. These guidelines foster the development of publicly reported data that is meaningful to the consumer, that includes the active involvement of the physicians and other providers being measured (including the requirement that physicians/providers have adequate time to review and correct inaccurate data prior to release), that the measures and methodology used are transparent and valid, and that the measures being reported are based on multi-stakeholder determined national standards to the greatest extent possible.

Reconsiderations

The College commends CMS for proposing to change regulations for MA and Prescription Drug Benefit Programs to allow a treating physician to directly request either expedited or standard plan reconsideration on behalf of the enrollee without having been appointed the enrollee's personal representative. This change will facilitate the ability of beneficiaries to obtain the medications they require in a timelier, more efficient manner.

The College encourages your serious consideration of the above comments. Please contact Neil Kirschner, Ph.D. on our staff at nkirschner@acponline.org of 202-261-4535 if you have any specific questions regarding these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Yul Ejnes MD". The signature is fluid and cursive, with the letters "Y", "E", and "J" being particularly prominent.

Yul Ejnes, MD, FACP
Chair, Medical Service Committee