



APPENDIX D - AGENCY COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator

Washington, DC 20201

DATE: March 24, 2022

TO: Suzanne Murrin
Deputy Inspector General for Evaluation and Inspections

FROM: Chiquita Brooks-LaSure *Chiquita LaS*
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care, OEI-09-18-00260

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to its oversight and enforcement of the requirements of the Medicare Advantage program.

Medicare Advantage plans are Medicare-approved managed care plans offered by Medicare Advantage Organizations (MAOs), which are private companies, as an alternative to original Medicare. MAOs must generally cover the same benefits as original Medicare. However, as part of the managed care structure, MAOs may apply internal coverage policies that are no more restrictive than original Medicare's national and local coverage policies to ensure that plan-covered items and services are medically necessary and appropriately targeted to the beneficiary's condition and diagnostic needs. MAOs are required to establish and maintain written standards, such as coverage rules, practice guidelines, payment policies, and utilization management policies, that allow for individual medical necessity determinations.

MAOs must follow national and local Medicare coverage determinations (NCDs and LCDs) and coverage guidance specified in original Medicare manuals, if specific guidelines exist for a given service. However, in many cases, NCD or LCD requirements are broad enough that an MAO may implement additional coverage requirements to better define the need for the service, as long as these additional requirements do not violate the requirements of the applicable NCD or LCD. Where there are no applicable NCDs or LCDs, MAOs may establish coverage guidelines, as long as the MAOs' guidelines are supported by medical evidence. Additionally, for services that are not subject to existing LCD and NCD requirements, MAOs may apply third-party guidelines, such as guidelines used by contractors engaged by the MAO to make coverage determinations.

CMS uses several tools to oversee the Medicare Advantage program and help ensure enrollees have adequate access to health care services. For example, CMS conducts annual audits of a sample of MAOs to evaluate compliance with the terms of the MAOs' contracts with CMS; in particular, the requirements associated with access to medical services, drugs, and other enrollee protections required by Medicare. CMS also targets audits to areas of concern, such as service types with a high rate of denial. CMS notifies plans of noncompliance, such as when it believes a plan's coverage is more restrictive than under original Medicare and represents a possible barrier to accessing care. MAOs are required to submit corrective action plans to address cited

deficiencies. Plans that are found to have repeated violations are subject to increasing penalties, including Civil Monetary Penalties, intermediate sanctions (suspension of payment, enrollment, and/or marketing activities), and even contract terminations.

In recent years, CMS has increased the transparency of audit findings by publishing them on the Medicare.gov website and developing a publicly available audit annual report with best practices MAOs can adopt to continue improving performance. Our oversight efforts are yielding positive results, with the average number of issues cited per audit declining approximately 70 percent from 2012 to 2019. In addition, CMS has populated information on the Medicare Plan Finder website to provide beneficiaries with information on MAO performance. In addition to the Star Ratings mentioned in this report, CMS has utilized the enrollment function in Medicare Plan Finder to cease enrollment in MAOs that fail to meet certain requirements. In addition, CMS continues to examine ways in which we can use technology tools to streamline processes like prior authorization to make them less burdensome on patients and providers.

While the Medicare Advantage payment denial rate is an important area to continue to monitor closely, CMS notes that the overall Medicare Advantage payment request denial rate cited by OIG for 2018 (9.5 percent) is comparable to the original Medicare denial rate during the same time period.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

CMS should issue new guidance on the appropriate use of MAO clinical criteria in medical necessity reviews.

CMS Response

CMS concurs with this recommendation. CMS plans to issue clarifying guidance regarding appropriate use of clinical criteria in medical necessity reviews.

OIG Recommendation

CMS should update its audit protocols to address the issues identified in this report, such as MAO use of clinical criteria and/or examining particular service types.

CMS Response

CMS concurs with this recommendation. CMS will update its audit protocol if changes are necessary to align its audit processes with the guidance CMS plans to issue under Recommendation 1. Similarly, CMS will update its auditor training materials if changes are necessary as a result of the guidance CMS plans to issue under Recommendation 1.

OIG Recommendation

CMS should direct MAOs to take additional steps to identify and address vulnerabilities that can lead to manual review and system errors.

CMS Response

CMS concurs with this recommendation. CMS will direct MAOs to examine their manual review and system programming processes and address vulnerabilities that may result in inappropriate denials in keeping with clarifying guidance that CMS plans to issue under Recommendation 1.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

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This report was prepared under the direction of Blaine Collins, Regional Inspector General for Evaluation and Inspections in the San Francisco regional office and Abby Amoroso, Deputy Regional Inspector General.

Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

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