

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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200 Independence Avenue, SW
Washington, DC 20201

FACT SHEET

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Contact: CMS Media Relations

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(202) 690-6145 | press@cms.hhs.gov

CMS proposes program changes for Medicare Advantage and Prescription Drug Benefit Programs for Contract Year 2015 (CMS-4159-P)

On January 6, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule with comment period that would strengthen protections, improve health care quality and reduce costs for Medicare beneficiaries with private Medicare Advantage (MA) and Part D prescription drug plans in Contract Year (CY) 2015. Among the technical and program changes this rule proposes are new criteria for identifying protected classes of drugs, revisions that promote competition in Part D plans, changes to the regulatory definition of negotiated prices, and changes to ensure that plan choices are meaningful for beneficiaries. This fact sheet discusses the major provisions of the proposed rule. The proposed rule would save \$1.3 billion over the five years 2015 – 2019 if finalized.

Summary of Proposed Changes

New criteria for drug categories or classes of clinical concern: In the first year of the Medicare prescription drug benefit, CMS implemented a policy that required all Part D plans to include on their formularies “all or substantially all” Part D drugs within six drug classes—antineoplastics, anticonvulsants, antiretrovirals, antipsychotics, antidepressants, and immunosuppressants. The Affordable Care Act later codified this policy, and allowed CMS to specify criteria for identifying protected classes through notice and comment rulemaking. CMS proposes to change the categories

or classes of Part D drugs of clinical concern using criteria established through this notice and comment rulemaking. Under the proposed criteria, CMS would require formulary inclusion of all drugs within the antineoplastic, anticonvulsant, and antiretroviral drug classes (subject to proposed exceptions), but would no longer require all drugs from the antidepressant and immunosuppressant drug classes to be on all Part D formularies. Although antipsychotics do not meet the criteria, they will remain protected at least through 2015 while CMS evaluates additional considerations and the need for any other formulary exceptions.

Increased competition: In response to anti-competitive tactics that have contributed to inconsistencies in bidding, payments, and market price signals for Medicare Part D plans, the rule proposes to revise the regulatory definition of negotiated prices to require all price concessions from pharmacies to be reflected in negotiated prices. The proposed rule would require greater cost savings for beneficiaries in return for offering preferred cost sharing so that sponsors cannot incentivize use of selected pharmacies, including the sponsors' own related-party pharmacies that charge higher rates than their competitors.

More meaningful plan choices: In order to ensure that beneficiaries have better access to health plan services with meaningfully different benefits and transparent costs, and because the Affordable Care Act's closing of the "donut hole" has reduced the need for plans offering enhanced benefits, CMS proposes that Prescription Drug Plans Sponsors offer no more than two Part D plans in the same service area. CMS seeks comments on ways to ensure that a plan sponsor's basic Part D bid represents its lowest-premium plan offering. This provision would not be effective until 2016. The proposed rule would also prohibit MA plans from offering new plans that simply replace plans CMS has required to be terminated or consolidated due to low enrollment.

Improving payment accuracy: The proposed regulation also would implement the Affordable Care Act requirement that MA plans and Part D sponsors report and return identified Medicare overpayments.

Improved MA risk-adjustment data validation (RADV) audit process: The proposed rule would strengthen RADV by streamlining the RADV audit process by combining error rate calculation appeals and medical record review-determination appeals into one combined process.

Expanded Part D data sharing: CMS proposes to expand the release of unencrypted prescriber, plan and pharmacy identifiers contained in prescription drug event (PDE) records to give researchers broader access to health care data. This would support CMS's growing role as a value-based purchaser of health care. The release of this data would still be subject to CMS's "minimum necessary," "legitimate researcher" and "non-release for commercial purposes" policies as required by law.

Expanded prevention and health improvement incentives: The rule proposes to expand rewards and incentive programs that do not discriminate against any MA beneficiaries that focus on encouraging participation in activities that promote improved health, efficient use of health care resources and prevent injuries and illness.

Fraud and abuse: Section 6405 of the Affordable Care Act requires that physicians and non-physician practitioners who order durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) or certify home health care must be enrolled in Medicare. The statute also permits the Secretary to extend these Medicare enrollment requirements to physicians and non-physician practitioners who order or certify all other categories of items or services in Medicare, including covered Part D drugs. CMS is proposing to require that physicians or non-physician practitioners who write prescriptions for covered Part D drugs must be enrolled in Medicare for their prescriptions to be covered under Part D.

For a fact sheet on CMS' strategy to prevent fraud and abuse under Part D, please see: <http://www.cms.gov/Newsroom/Newsroom-Center.html>.

CMS welcomes public comments to these proposed program changes; they will be accepted from all stakeholders through the close of business 60 days after the date of display of the proposed rule in the Federal Register. CMS will consider these comments in developing the final rule, which will generally be effective for Contract Year 2015 operations.

The proposed rule will be published in the Federal Register on January 10, 2014. CMS will accept comments on the proposed rule until March 7, 2014.

For more information, please see:

<http://www.ofr.gov/inspection.aspx?AspxAutoDetectCookieSupport=1>.

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