PUBLICATION

CMS Clarifies Broad Scope of Hospices' Payment Responsibility for Part D Drugs [Ober|Kaler]

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In a December 6, 2013 memorandum [PDF] to all Medicare hospice providers and Part D plan sponsors, CMS expressed concern that drugs covered under the Part A hospice benefit are being billed to Part D inappropriately. Accordingly, effective March 1, 2014, Part D plan sponsors are to place beneficiary-level prior authorization (PA) requirements on *all* drugs for hospice beneficiaries to determine whether the drugs are coverable under Part D. CMS's guidance reflects the agency's belief that drug coverage under Part D for hospice beneficiaries should be "extremely rare."

Clarification of Hospice Payment Policy

The Medicare hospice benefit has long covered only those drugs and biologicals used "primarily for the relief of pain and symptom control for the terminal illness and related conditions." 42 C.F.R. § 418.202(f). In its memorandum, CMS clarified that this encompasses "all medical supplies and drugs needed to manage all the patient's health conditions related to the terminal prognosis, to minimize symptoms and maximize comfort and quality of life."

As a result, CMS expects hospice providers to cover "virtually *all* drugs" for hospice beneficiaries; such drugs should generally be considered included in the Medicare hospice per diem payment made under Part A. Only where the drug is unrelated to the terminal prognosis of the individual may a hospice provider submit a claim to a Part D plan sponsor.

However, CMS was careful to note that if a beneficiary requests a drug for his or her terminal illness or related condition that is not on the hospice formulary, and the beneficiary refuses to try a formulary equivalent first; or if the drug is determined by the hospice to be unreasonable or unnecessary for palliation of pain or symptom management, the beneficiary may choose to assume financial responsibility for the drug. In such circumstances, CMS stated no payment for the drug will be available under Part D.

Part D Plan Sponsors: PA Requirements on All Drugs for Hospice Beneficiaries

Because of CMS's expectation that drugs covered under Part D for hospice beneficiaries will be extremely rare, it has instructed Part D sponsors, as of March 1, 2014, to place beneficiary-level PA requirements on all drugs for hospice beneficiaries to determine whether the drugs are coverable under Part D. Consequently, where a hospice seeks to prescribe a medication for a condition completely unrelated to the terminal illness or related conditions, the hospice provider or prescriber must immediately provide to the Part D plan sponsor written documentation necessary to satisfy the PA requirements. At this time CMS expects sponsors to accept the documentation that the drug is unrelated and not waived through the hospice election.

Where a Part D plan sponsor pays for drug claims prior to receiving notification of the beneficiary's hospice election, the sponsor must perform a subsequent review of claims paid within the hospice election period and is obligated to "conduct outreach to the hospice provider" to make a retrospective determination of payment responsibility for the drugs. Payment recovery is to be handled without involving the pharmacy.

Where the hospice provider and Part D plan sponsor disagree in either of the above circumstances (that is, with respect to a hospice's PA request or a retroactive determination by the Part D sponsor), CMS noted that it intends to establish an “independent review process” to resolve such disputes. Additional details and guidance regarding the independent review process are to be released by CMS at a later date.

In the interim, where the Part D plan sponsor and the hospice provider disagree, the Part D plan sponsor is to accept and maintain the hospice's documentation that the drug is unrelated and not waived through the hospice election. Additionally, the Part D plan sponsor is to flag the claim at issue and request a retrospective determination of drug payment responsibility by the independent reviewer once the process is implemented.

Ober|Kaler's Comments

While for several years, CMS has expressed concern regarding duplicate Part D plan sponsor payments for hospice beneficiaries, CMS's memoranda indicates the agency's renewed focus on ensuring hospice drug payment compliance.

CMS's memoranda follows on the heels of a recent 2012 Department of Health and Human Services, Office of the Inspector General report [PDF] that identified $33.6 million in potential duplicate Part D payments for common categories of prescription drugs typically used to treat end of life symptoms that likely should have been covered by hospice providers. Similarly, a CMS contractor recently concluded that in 2010, nearly 15 percent of hospice beneficiaries received analgesics through Part D, totaling $12.9 million. (Notably, in this study, CMS highlighted that a sizable minority of hospices, just ten percent, accounted for 51 percent of Part D analgesic claims, and such hospices were typically for-profit, new, or rural).

As a result of CMS's intensified efforts to address duplicate Part D payments, hospices should review current documentation practices with respect to identifying those medications that are related (and not related) to the patient's terminal diagnosis.

Additionally, hospice providers should make sure they have communication strategies in place with Part D plans in their service area, as hospice providers are responsible for coordinating with Part D plan sponsors to determine payment responsibility for those drugs they believe are completely unrelated to the terminal illness or related conditions.