

CENTER FOR MEDICARE

DATE: August 29, 2017

TO: All Medicare Advantage Organizations and Part D Sponsors

FROM: Kathryn A. Coleman, Director, Medicare Drug & Health Plan Contract Administration Group

Amy Larrick Chavez-Valdez, Director, Medicare Drug Benefit and C & D Data Group

SUBJECT: Reminder of Pharmacy and Provider Access during a Federal Disaster or Other Public Health Emergency Declaration

Due to the effects of Hurricane Harvey, the President has issued a major disaster declaration for Texas and an emergency declaration for Louisiana. In addition, Secretary Tom Price, MD, has declared a public health emergency and authorized waivers and modifications under Section 1135 of the Social Security Act for Texas and Louisiana.

In this memorandum, the Centers for Medicare & Medicaid Services (CMS) reminds Medicare Advantage Organizations (MAOs) and Part D sponsors of their obligations to maintain access to the Part A/B, supplemental Part C, and Part D benefits (as applicable) for beneficiaries in these areas. Requirements related to Part A/B and supplemental Part C benefit access during a disaster or other public health emergencies are located at Chapter 4: Benefits and Beneficiary Protections (Section 150) of the Medicare Managed Care Manual (<http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/mc86c04.pdf>) and for pharmacy access at Chapter 5: Benefits and Beneficiary Protections (section 50.12) of the Prescription Drug Benefit Manual (www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/PartDManuals.html).

Under 42 CFR 422.100(m), MAOs must do the following:

- Allow Part A/B and supplemental Part C plan benefits to be furnished at specified non-contracted facilities (note that Part A/B benefits must, per 42 CFR § 422.204(b)(3), be furnished at Medicare certified facilities);
- Waive, in full, requirements for gatekeeper referrals where applicable;
- Temporarily reduce plan-approved out-of-network cost sharing to in-network cost-sharing amounts; and
- Waive the 30-day notification requirement to enrollees as long as all the changes (such as reduction of cost sharing and waiving authorization) benefit the enrollee.

As with all disaster declarations, Part D sponsors:

- Consistent with 423.124(a), must ensure enrollees have adequate access to covered Part D drugs dispensed at out-of-network pharmacies when those enrollees cannot reasonably be expected to obtain covered Part D drugs at a network pharmacy, and when such access is not routine;
- Are expected to lift their “refill-too-soon” edits. Sponsors have operational discretion as to how these edits are lifted during a disaster or emergency as long as access to Part D drugs is provided at the point-of-sale; and
- Are expected to allow an affected enrollee to obtain the maximum extended day supply, if requested and available at the time of refill.

Part D sponsors also may consider extending the implementation of their “refill-too-soon” edits past the expiration of the declaration. However, if sponsors choose to remove the edits, they need to work closely with enrollees who indicate that they are still displaced or otherwise impacted by the disaster or emergency.

Please note that the rules governing usual CMS’ payments to MAOs and Part D sponsors remain unchanged, and are not affected by the disaster declaration or this guidance.

Finally, we remind MAOs that under the Secretary’s section 1135 waiver authority, CMS may authorize Medicare Administrative Contractors (MACs) to pay for Part C-covered services furnished to beneficiaries enrolled in Medicare Advantage plans and subsequently seek reimbursement from MAOs for those health care services retrospectively.

A complete listing of the areas impacted by this major disaster and emergency declaration can be found on the Federal Emergency Management Agency’s (FEMA’s) web site (<http://www.fema.gov/news/disasters.fema>).