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DATE: October 28, 2013

TO: Employer Group Waiver Plan Sponsors

FROM: Cynthia G. Tudor, Ph.D., Director, Medicare Drug Benefit and C&D Data Group

RE: Clarifications to the 2014 Policy on Automatic Delivery of Prescriptions for Employer Group Waiver Plans

The Centers for Medicare and Medicaid Services (CMS) announced in the 2014 Call Letter that Part D sponsors should require their network retail and mail pharmacies to obtain beneficiary or authorized representative consent to deliver a prescription, new or refill, prior to each delivery. Beneficiaries cannot be required to use mail-order pharmacy, nor can plans auto-enroll Part D beneficiaries in automatic fill/automated refill and delivery programs (referred to in this memo generally as “automatic delivery programs”). This applies to all Employer Group Waiver Plans (EGWP) offered by Medicare Advantage-Prescription Drug Plan sponsors or stand-alone Part D sponsors.

CMS has been analyzing a request to allow EGWPs to continue offering automatic delivery programs, without obtaining consent prior to each delivery, if the automatic delivery program design supports beneficiary-directed care and minimizes beneficiary liability for unwanted shipments. CMS continues to track a large number of complaints related to automatic delivery programs. Complaints include beneficiaries reporting that they were auto-enrolled in automatic delivery programs, difficulty stopping auto-shipments, ongoing automatic credit card charges for unneeded/unwanted orders, and receiving unwanted items that their prescribing provider submitted directly to the pharmacy.

In a HPMS memo dated July 17, 2013, we proposed characteristics of EGWP automatic delivery programs that would meet CMS’ expectations for ensuring beneficiary-directed care and minimize beneficiary liability. After reviewing the comments submitted, we are now clarifying that for Calendar Year 2014 only, the policy for obtaining consent prior to each delivery is not required for beneficiaries in EGWP auto-ship programs if the following conditions are met and can be demonstrated upon request (including audit):

1. Enrollee participation in the automatic delivery program is voluntary and opt-in only;
2. The automatic delivery program only applies to prescription refills and does not apply to new prescriptions that are e-prescribed, faxed, mailed, or phoned-in directly to the pharmacy, even if the new prescription is a continuation of existing therapy;

3. The EGWP has easy to locate and easy to understand beneficiary materials on how to disenroll from automatic delivery programs, and the EGWP responds promptly to all disenrollment requests;
4. The EGWP will provide a full refund to the beneficiary and delete the prescription drug event (PDE) for any auto-shipped refill that the beneficiary reports as unneeded or otherwise unwanted. Beneficiary materials related to refunds must be easy to locate and easy to understand. Plans providing no-fee return of unneeded or unwanted drugs do not need to provide a full refund or delete the PDE when the prescription has been fully or partially used or consumed;
5. The EGWP will confirm whether the beneficiary wants to continue in the automatic delivery program at least annually and upon receipt of a new prescriptions from a provider, even if the new prescription is a continuation of existing therapy; and
6. The EGWP will promptly discontinue automatic delivery after notification that a beneficiary entered a skilled nursing facility, or elected hospice coverage.

EGWP sponsors interested in offering an automatic delivery program that does not feature obtaining consent prior to each delivery after January 1, 2014 must submit a request to PartDPolicy@cms.hhs.gov no later than December 18, 2013. EGWPs will need to submit the sponsor name, contract number(s), and whether the automatic delivery program will be applied to some or all of their EGWP contracts

CMS will be closely monitoring this and other EGWP-specific policies in the coming year to determine the best course of action starting in 2015.

For further questions on automatic delivery policy for 2014, please contact Marie Manteuffel at (410) 786-3447 or Marie.Manteuffel@cms.hhs.gov.