

VIA Electronic Submission to <http://www.regulations.gov>

July 6, 2010

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-6010-IFC
P.O. Box 8013
Baltimore, MD 21244

Re: CMS-6010-IFC; Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements

Dear Sir or Madam:

Thank you for the opportunity to submit our comments on CMS' interim final rule with comment period (IFC) regarding new documentation requirements for payment of claims for ordered/referred Medicare Part B items and services. As the Centers for Medicare & Medicaid Services (CMS) considers issues pertinent to the documentation required for payment of a supplier's Medicare Part B claims, the National Community Pharmacists Association (NCPA) appreciates the opportunity to share our perspectives.

NCPA represents America's community pharmacists, including the owners of more than 23,000 community pharmacies, pharmacy franchises, and chains. Together these represent an \$84 billion healthcare marketplace, employ nearly 60,000 licensed pharmacists, employ over 300,000 full-time employees, and dispense nearly half of the nation's retail prescription medicines. Many Medicare beneficiaries, particularly in rural and urban areas, depend on their local independent pharmacies to provide them with Medicare Part B Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and services, especially Part B diabetic supplies.

NCPA, therefore, looks forward to CMS reviewing the following comments to CMS-6010-IFC, which requires, among other provisions, that Part B suppliers verify that a referring physician or eligible professional who ordered a Part B item or service have an approved enrollment in the Provider Enrollment, Chain and Ownership System (PECOS) as a condition of CMS payment to the supplier.¹ In particular, NCPA requests that CMS delay automatic rejections of claims based on PECOS-based edits and administrative review and recoupment of PECOS-based claim rejections until January 3, 2011, or later, depending on when the Phase 2 edits to PECOS can be implemented and will be fully operational. Essential to the need for a delay are the following NCPA concerns with PECOS: low provider/referrer enrollment in PECOS; enrollment delays; lagging updates to PECOS; suppliers' need

¹ CMS-6010-IFC, Medicare Program; Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements at pages 24448 of the Federal Register, Vol. 75, No. 86, May 5, 2010.

for adequate time to re-bill claims denials resulting from PECOS edits; and unworkable requirements to include specific information on Part B claims.

The Implementation Date for Phase 2 Edits Should be January 3, 2011, or Later

NCPA appreciates and is pleased by CMS' recent message (CMS to Review PECOS Enrollment Process) dated June 30 that it will not automatically reject submitted claims based on PECOS edits beginning July 6, 2010. Nonetheless, NCPA remains concerned that starting July 6, 2010, CMS may still engage in administrative review and recoupment of claims submitted by pharmacies based on prescriptions issued by professionals who are not enrolled and/or do not have approved applications in the PECOS system. Accordingly, NCPA seeks regulatory clarification on whether CMS intends to pursue such administrative review and claim recoupment starting July 6, 2010, through a contingency plan employed by the Agency, as referenced in the June 30 message.

NCPA contends that CMS should delay both automatic rejections and administrative review and recoupment of PECOS-based rejected claims until at least January 3, 2011, or later, depending on when the Phase 2 PECOS edits are fully operational and can be implemented. CMS needs more time to make adjustments and fix PECOS' deficiencies, so that Part B suppliers can have more confidence in PECOS edits regarding which providers/referrers are or are not validly enrolled. Moreover, providers/referrers need more time to enroll in PECOS, as many providers/referrers are still not enrolled and are presently unaware of the need to enroll in PECOS, or have faced technical difficulties and delays in completing the enrollment process.

NCPA members who participate as Medicare Part B suppliers have a multitude of claims contingent on a deficiency-free PECOS and bear the financial risk of filling Part B prescriptions subject to possible administrative review and recoupment. Simply put, PECOS does not contain up-to-date information and, therefore, does not contain completely accurate enrollment information upon which Part B suppliers may safely rely. Faced with questionable PECOS edits, NCPA members may choose to be extremely cautious when filling some Part B prescriptions, resulting in potential delays in prescriptions being dispensed, or the beneficiary being forced to see another Part B provider that is definitely enrolled in PECOS. Therefore, NCPA requests that CMS delay until January 3, 2011, or later, the implementation of the Phase 2 edits to PECOS, including delaying administrative review and recoupment efforts of PECOS-based claim rejections.

The Need for PECOS Updating and Error Code Reforms

PECOS contains system deficiencies that negatively impact the ability of NCPA members to fill Part B prescriptions for beneficiaries and receive reimbursement. First, the PECOS enrollment file to which NCPA members have access is updated only "periodically," not on a nightly basis. Accordingly, NCPA members who access PECOS are not receiving up-to-date accurate information on provider/referrer enrollment. The accuracy of the PECOS enrollment information is completely outside of NCPA members' control, and yet they and their patients will suffer from the PECOS update deficiency. Accordingly, NCPA requests that CMS make nightly updates to the PECOS enrollment information list available to community pharmacies.

Second, NCPA requests that CMS reform the common electronic data interchange (CEDI) error codes. Currently, when a NCPA member receives one of the three CEDI error codes indicating a deficient claim, the error codes do not indicate the reason for the deficiency. NCPA members receive the same error code regardless of whether the cause of the deficiency is physician non-enrollment or a data mismatch between the claim and the PECOS enrollment file. Accordingly, NCPA is requesting that CMS work to create more granular error codes, so that NCPA members will have more information needed to determine why a particular Part B claim is being rejected. Without such changes, beneficiaries will experience disruption in their access to Part B items and services.

Additional Time Necessary to Re-Bill Claims Denied Due to PECOS Edits

NCPA members are experiencing claims rejections rates of up to 30% as a result of the PECOS issues described above. Therefore, in cases where a claim is denied as a result of PECOS edits, NCPA members should be provided with the normal Part B timely filing period to re-bill those claims. Many of the PECOS-based claims rejections are due to a data mismatch between the claim and the PECOS enrollment file, or for other reasons outside of the NCPA member's control. Resolution of such problems requires coordination and action among physicians, NCPA members and other Part B providers/referrers, which requires significant time. The truncated 120 days normally provided for "denied" claims is insufficient to resolve claims denial issues resulting from PECOS edits. Accordingly, NCPA requests that CMS allow Part B suppliers one year to re-bill claims denied due to PECOS edits.

Requirement to Include Specific Physician or Eligible Professional Information on Claim Unworkable

The requirement in the IFC that a claim must identify the teaching physician as the ordering or referring supplier where the items or services were ordered or referred by a resident or an intern creates an insurmountable hurdle for community pharmacists. Pharmacists are required by state pharmacy laws and regulations to list the issuing prescriber on the prescription. This prescriber is tied to the prescription in the pharmacy management system and, therefore, will be the only prescriber contained on the claim. To meet the requirement in the IFC would mean a pharmacist had to place the teaching physician's name on the claim when in fact they did not write the actual prescription. In addition, rarely do prescriptions written by interns or residents include the teaching physician's name and, therefore, the IFC requirement would lead to a delay in filling a Part B prescription while the pharmacist or technician spends needless time searching for the teaching physician via the phone. Accordingly, NCPA requests that CMS remove the requirement to include the teaching physician as the ordering or referring supplier on the claim.

In addition, NCPA contends that community pharmacists will not be able to include the legal name of the prescriber in all instances on the claim. As prescribers are not required to use their legal name when writing a prescription, pharmacists will include whichever name is on the signature line or pre-printed on the prescription pad as the prescriber's name for purposes of documentation related to filling and billing for a prescription. The requirement to include the prescribers NPI should be enough

evidence to verify a particular provider and, therefore, NCPA requests that CMS remove the requirement to include the legal name of the physician or eligible provider on the claim.

Conclusion

The IFC regarding new documentation required for payment of Part B suppliers' claims, if enacted in its current form and on the date proposed, July 6, 2010, will result in confusion and disruption in the ability of Part B beneficiaries to obtain access to their Part B services and supplies, as well as expose Part B suppliers to the risk of administrative review and potential recoupment of ultimately rejected Part B claims for reimbursement. The Phase 2 edits to PECOS are not ready for implementation and, therefore, existing PECOS deficiencies could result in delays in filling validly reimbursable Part B prescriptions. Given these PECOS deficiencies, NCPA respectfully requests that CMS implement the following changes: 1) Delay the implementation of the Phase 2 PECOS edits and administrative review and recoupment of PECOS-based claim rejections until at least January 3, 2011; 2) Require pharmacy access to nightly provider/referrer enrollment updates to PECOS; 3) Develop more granular CEDI error codes for pharmacists to identify and resolve Part B claims denials; 4) Allow one year for Part B suppliers to re-bill claims denied due to PECOS edits; and 5) Remove requirements to include the teaching physician as the ordering or referring supplier and the legal name of the physician or eligible provider on the claim.

NCPA appreciates the opportunity to comment on CMS-6010-IFC. Please do not hesitate to contact me at (703) 683-8200 if you have any questions.

Sincerely,



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