



DAILY NEWS

CMS Backs Off Non-Formulary Drug Requirement In Final 2015 Issuer Letter

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CMS has scrapped an earlier proposal that would have given exchanges authority to require that insurers starting in 2015 cover non-formulary drugs for the first 30 days of an enrollee's coverage to avoid disruptions in treatment, according to the agency's [final 2015 letter](#) to insurers released late Friday (March 14). The proposed standard had been protested by insurers and business groups but drew support from patient and consumer groups.

The final 2015 letter to qualified health plan issuers in the federally facilitated exchanges makes no mention of the proposal, which had been outlined in the draft letter CMS issued in February. CMS wrote at that time that it intended to propose that, starting with the 2015 plan year, exchanges may require issuers to temporarily cover non-formulary drugs -- including ones that are on the issuer's formulary but require prior authorization or step therapy -- as if they were on the formulary for the first 30 days of coverage for coverage beginning Jan. 1. The proposed policy also would have allowed new QHP enrollees to receive coverage for non-formulary drugs without using the exceptions process.

Instead, CMS writes in the final 2015 letter that it encourages issuers to cover a transitional fill of non-formulary drugs for new enrollees, language that mirrors a regulation that was issued in late 2013. Groups that had supported the tougher standard in the draft letter include National Health Council, Families USA and National Health Law Program.

"We appreciate CMS's ongoing efforts to facilitate minimal disruptions in care as consumers transition to new health plans," Families USA wrote in its comments on the draft letter. "We believe it is vitally important that FFMs also have policies in place to minimize disruptions in care created by switching to a plan with a different provider network or different policies regarding coverage of certain medical services."

The agency does say in the final letter, however, that it is considering amending the formulary exceptions standard to require that those processes be expedited when necessary, such as when an enrollee is suffering from a serious condition or is in a course of treatment where the drug is not on the QHP formulary. CMS says it is considering specifying that an issuer render decisions within 24 hours of receiving an exceptions request.

Groups that had protested the agency's previous plan to temporarily require coverage of non-formulary drugs include America's Health Insurance Plans, U.S. Chamber of Commerce, and

Affordable Health Benefits Coalition, a consortium that includes the National Retail Federation, Blue Cross and Blue Shield Association, Pharmaceutical Care Management Association and Retail Industry Leaders Association, among others.

"There are already mechanisms in place to address enrollees' needs for non-formulary drugs when coverage begins, such as exceptions and appeals processes," the coalition wrote in its comments on the draft 2015 letter. "Insurers use these same mechanisms and best practices for plans offered on the marketplace/exchange as they do for their other lines of business, including employer group coverage."

CMS also retains the [drug outlier test](#) that it had outlined in the draft letter, which stated that the agency would examine plans that were outliers based on "an unusually large number of drugs subject to prior authorization and/or step therapy requirements in a particular category or class." The letter also encouraged FFE states which are doing plan management to implement that type of review. Several groups supported such a test, however the AIDS Institute argued that CMS was not really enforcing the ACA's non-discrimination standards and that what the agency had proposed was insufficient.

"While we appreciate that CMS is attempting to be responsive to our complaints regarding these practices, CMS is not providing any real enforcement mechanism or proposing any penalties for plans that engage in these practices. Additionally, again, CMS is only 'encouraging' states to implement plan reviews for these practices," the AIDS Institute wrote. – *Rachana Dixit*