

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

November 29, 2016

Amy Larrick Chavez-Valdez, Director,
Medicare Drug Benefit and C & D Data Group
Sent electronically via email to: PartCandDStarRatings@cms.hhs.gov

Re: Enhancements to the Star Ratings for 2018 and Beyond

Justice in Aging appreciates the opportunity to comment on the proposed options for adjusting Star Ratings for audits and enforcement action for Medicare Advantage and Prescription Drug Plans.

Justice in Aging is an advocacy organization with the mission of improving the lives of low income older adults. Justice in Aging uses the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries, including those dually eligible for both programs.

We appreciate the thoughtful analysis and explanations in the proposal and particularly appreciate the iterative process for stakeholder input. An open approach with multiple opportunities for comment as options are refined provides the best opportunity for solid policy decisions. Our thoughts on the proposed options are outlined below.

1. Disconnect between audit results and star ratings

As beneficiary advocates, we have appreciated the thoroughness of the audit process and the willingness of CMS to impose significant sanctions and penalties when serious deficiencies are identified. We have had growing concerns, however, about the increasing disconnect between the audit process and the Star Rating system. Audits and stars have used different but complementary approaches; however, as these two avenues of oversight and evaluation diverge, the star system may become less valuable to beneficiaries. Of particular concern is the continued finding of the same serious deficiencies in audits, deficiencies that directly affect beneficiary access to needed prescription drugs and medical services. At the same time that audits are finding that the same serious problems blocking access persist year after year across many plans,¹ plan star ratings continue to rise so that now, as CMS noted, 49 percent of MA-PDs will achieve four or more stars. To address this imbalance, it is critically important that star ratings incorporate audit measures in meaningful ways. We appreciate that CMS shares this concern and is taking concrete steps to address it.

2. Treatment of plans under sanction

We are sensitive to industry arguments that the prior policy of a uniform automatic reduction to 2.5 stars unfairly penalizes plans with higher star ratings because the ratings drop for them can be

¹See 2015 Part C and Part D Program Audit and Enforcement Report (Sept. 6, 2016), available at https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/Downloads/2015_C_and_D_Program_Audit_and_Enforcement-Report.pdf

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significantly greater than for a plan that only had an average star rating. We note, however, that suspension of enrollment is only instituted when CMS determines that a plan's conduct poses a serious threat to the health and safety of Medicare beneficiaries. We believe, therefore, that an automatic reduction of at least one star is fully appropriate for plans with intermediate sanctions. An across the board one-star reduction levels the playing field so that previously highly rated plans are not disproportionately disadvantaged. It also, importantly, signals the severity of the violations and offers beneficiaries a tool that helps them to realistically compare plans. When violations are so severe that they trigger enrollment sanctions, it is not enough to merely include them as part of a measure or sub-measure. That lower level of attention does not send the right signal to plans or to beneficiaries. When CMS finds that a plan's systems pose a serious threat to the health and safety of Medicare beneficiaries, that finding must have an impact on overall ratings. If such a serious finding does not have a significant impact on the overall star rating for a plan, the disconnect between audits and star ratings is too great and diminishes the credibility of both processes.

3. Monetary penalties

For monetary penalties, we agree that an enhanced measure can be an effective approach. We appreciate that CMS proposes to rely on more recent data, which will definitely be helpful.

Civil monetary penalties are different from overall itemization of measures that must be reported by all plans. We also urge CMS to continue to reject the "double counting" arguments of plans. It is not double counting to include civil monetary penalties that involve deficiencies which are also captured in other measures. The penalties are imposed because of a significant impact on beneficiaries and they should be treated as a separate and important measure.

Finally, it is difficult for advocates to test or gauge the extent to which a particular weight or measure works effectively within the complex star system. We urge CMS to make data runs of hypothetical cases to ensure that its final star rating system adequately reflects the severity of the practices that incur monetary penalties. While we fully expect that plans will seek a system that minimizes the impact of monetary penalties, we urge CMS to hold firm in treating these penalties with the seriousness that they deserve. Fixing the system to provide more fairness between plans is appropriate. A system that camouflages and minimizes behavior that puts beneficiaries at risk is not.

Thank you again for the opportunity to comment. If you need additional information, please do not hesitate to contact me at JGoldberg@justiceinaging.org.

Sincerely,



Jennifer Goldberg
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Justice in Aging