



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

The Medicare Rights Center (Medicare Rights) is pleased to submit comments. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Medicare Rights provides services and resources to over 2 million Medicare beneficiaries, family caregivers, and professionals annually. For additional information, please contact Casey Schwarz, Senior Counsel for Education and Federal Policy, at CSchwarz@medicarerights.org or 212-204-6271 and Stacy Sanders, Federal Policy Director at SSanders@medicarerights.org or 202-637-0961.

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.

1. CMS should resolve the disconnect between audit results and star ratings

Medicare Rights appreciates the thoroughness of the audit process and the willingness of CMS to impose significant sanctions and penalties when serious deficiencies are identified. However, the disconnect between the audit process and the Star Rating system causes confusion among both beneficiaries and advocates. As these two avenues of oversight and evaluation diverge, the star ratings system may become, or seem, less valuable to beneficiaries. Of particular concern is the repeated finding of the same serious deficiencies in audits, over time, many of which directly affect beneficiary access to needed drugs and services. At the same time,¹ plan star ratings continue to rise. To address this imbalance, it is critically important that star ratings incorporate audit measures and reflect audit results in meaningful ways. We appreciate that CMS shares this concern and is taking concrete steps to address it.

2. Treatment of plans under sanction

Medicare Rights understands the industry argument that the prior policy of a uniform reduction to 2.5 stars unfairly penalizes plans with higher star ratings because the ratings drop for them can be significantly greater than for a plan that only had an average star rating. Note, however, that such sanctions are only instituted when CMS determines that a plan's conduct poses a serious threat to the health and safety of Medicare beneficiaries. Therefore, an automatic reduction of at least one star is fully appropriate. 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 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.

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

When CMS finds that a plan's systems post a serious threat to the health and safety of Medicare beneficiaries, that finding must have an impact on overall ratings.

For monetary penalties, incorporating such findings into an enhanced measure may be an effective approach. Civil monetary penalties are different from overall itemization of measures that must be reported by all plans. Medicare Rights continues, however, to urge CMS to continue to reject the "double counting" argument against capturing civil monetary penalties into the star ratings measures. 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 the severity of the failure or the significant impact on beneficiaries and they should continue to be treated as a separate and important measure.

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. Medicare Rights urges 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.