Chapter 12 Section 4

Appeals Of Medical Necessity Determinations

Revision:

"Medical necessity" is considered a collective term for determinations based on medical necessity, appropriate level of care, custodial care (as these terms are defined in 32 CFR 199.2), or other reason relative solely to reasonableness, necessity or appropriateness. Determinations relating to mental health benefits under 32 CFR 199.4 are considered medical necessity determinations. For pharmacy claims, a determination regarding pharmaceuticals prescribed outside the guidelines issued by the Department of Defense Pharmacy and Therapeutics (DoD P&T) Committee is not considered a medical necessity determination, even when the determination is based on medical review. Such determination is a factual determination and should be processed in accordance with Section 5.

Medical necessity determinations may be performed when a pharmaceutical has been denied under the Pharmacy Benefits Program. Examples of medical necessity determinations include, but are not limited to:

- Whether medical necessity substantiates providing a beneficiary a non-formulary pharmaceutical or supply at the formulary copay;
- Where prior authorization is required for a designated pharmaceutical, whether supporting documentation supports authorization of the pharmaceutical; and
- Where the pharmaceutical is dispensed in accordance with the formulary, but retrospectively found to be not medically necessary for a specific diagnosis.

1.0 INITIAL DETERMINATION

A determination issued (following review by a second level reviewer) that concludes that the health care services furnished or proposed to be furnished to a patient are not medically necessary is an initial denial determination and is appealable under this section.

1.1 Opportunity For Discussion Of Proposed Denial Determination In Preadmission/ Preprocedure And Concurrent Review Cases

In preadmission/preprocedure and concurrent review cases, the contractor shall provide an opportunity to discuss a proposed initial denial determination. Before issuing an initial denial determination, the contractor shall:

- Promptly notify the provider or supplier and the patient's attending physician (or other attending health care practitioner) of the proposed determination.

- Afford an opportunity for the provider or supplier and the physician (or other attending health care practitioner) to discuss the matter with the contractor physician advisor and to explain the nature of the patient's need for health care services, including all factors which preclude treatment of the patient as an outpatient or in an alternative level of inpatient care.

- Record each successful and unsuccessful contact with a provider, which record must include the date and time, person contacted, context of conversation, and contractor personnel who participated in the contact.

1.2 Notice of Initial Denial Determination

The notice of the initial determination shall, where applicable, address waiver of liability for services found to be not medically necessary and include notice of appropriate appeal rights. (Refer to Section 1, paragraph 3.1 for the content of the notice of initial determination.) If the provider was verbally notified of the initial determination prior to issuance of the written initial determination, the time and date of the verbal notification shall be included in the Notice of the Initial Determination. The contractor shall provide written Notice of an Initial Determination to:

- The patient, unless the patient is represented by a guardian or other representative. If the patient is represented by a guardian or other representative, then the notice will be addressed and provided to the guardian or representative.

- The attending non-network participating physician, or other non-network participating health care provider.

- The facility, if one is involved.

1.3 Timing Of The Notice

The contractor shall ensure written notices of initial and appeal determinations are delivered in accordance with the TRICARE processing standards described in Chapter 1, Section 3. Reference paragraph 1.2 regarding beneficiaries represented by guardians or other representatives. If the beneficiary is represented in the appeal, the notice must be delivered to the beneficiary's representative, or, in the case of a minor beneficiary, to the parent or guardian of the minor beneficiary unless the claim was filed by the minor beneficiary. If the beneficiary is an inpatient, and is not a minor or represented, notices must be delivered to the beneficiary in the facility.

1.4 Preadmission/Preprocedure Review

In the case of preadmission review, the contractor shall document the date that the patient (or representative) and the facility received notice of the initial denial determination. If notice to the provider was verbal, the date and time of the verbal notice, the method by which verbal notice was given (e.g., telephone), and to whom and by whom the verbal notice was given, must be documented.

1.5 Effect Of The Initial Denial Determination

The initial determination is final and binding unless the initial determination is reopened by the contractor or revised upon appeal.

2.0 CONTRACTOR RECONSIDERATIONS

The contractor shall develop a written plan for and implement a formal appeals system that incorporates the requirements for reconsiderations of initial denial determinations. The opportunity for reconsideration shall be stated in the contractor's initial denial determination regarding the medical necessity, reasonableness or appropriateness of admission, continued stay, outlier days, and/or services rendered.

2.1 Right To Contractor Reconsideration

The contractor shall establish procedures to ensure a beneficiary (or representative) and non-network participating provider are notified in the initial denial notice of their right to a reconsideration of a contractor's initial denial determination (refer to Section 1, paragraph 3.1). These parties may request a reconsideration if there is an amount in dispute, regardless of the dollar amount in controversy. The following issues are subject to reconsideration if either the beneficiary and/or provider is dissatisfied with an initial denial determination:

- Reasonableness, medical necessity and appropriateness of the services furnished or proposed to be furnished.
- Appropriateness of the setting in which the services were or are proposed to be furnished.
- Whether the party is financially liable. The beneficiary who has been found liable may obtain a reconsideration of that determination. A provider may obtain a reconsideration of the determination whether the beneficiary is or is not liable. If a beneficiary or provider requests a reconsideration of the issues in the above paragraphs, the contractor shall make a determination of the limitation of liability issue at the same time.

2.2 Request For Contractor Reconsideration

The contractor shall allow a beneficiary (or representative) and/or non-network participating provider to submit a written request for reconsideration to the contractor. The following limitations apply:

- Only a beneficiary (or appointed representative) may submit a written request for an expedited reconsideration of preadmission/preprocedure.
- When continued certification is denied during concurrent review, and the beneficiary is still in the facility, only the beneficiary (or appointed representative) may request a reconsideration.
- A beneficiary or a non-network participating provider may request a nonexpedited reconsideration.

2.3 Time Frames For Reconsideration Requests

The contractor shall reconsider an initial denial determination if a written request is made by an appropriate appealing party within the following time frames:

2.3.1 Concurrent Review Denial

In order to file a request for reconsideration of a concurrent review denial determination, the beneficiary must be a patient in the facility on the date of appeal filing. The beneficiary is encouraged to file no later than noon of the day following the day of receipt of the initial denial determination. The date of receipt of the initial determination by the beneficiary shall be considered to be five calendar days after the date of the initial determination, unless the receipt date is documented. A request for reconsideration received after the reconsideration filing deadline for concurrent review, but which is postmarked or received within 90 calendar days from the date of the initial determination, shall be accepted. The contractor shall forward the concurrent review request to the TRICARE Quality Management Contract (TQMC) contractor for a reconsideration determination on the date the contractor receives the request. (Refer to paragraph 2.6.2.) An initial determination that denies services already provided is not considered a concurrent review denial, but is a retrospective review denial.

2.3.2 Preadmission/Preprocedure Denial

A request for an expedited reconsideration of a preadmission/preprocedure denial must be filed by the beneficiary within three calendar days after the date of the receipt of the initial denial determination. The date of receipt of the request for reconsideration shall be considered to be five calendar days after the date of the initial denial determination, unless the receipt date is documented. Appeals filed after the expedited appeal filing deadline will be treated as nonexpedited appeals. In situations where the preadmission/preprocedure appeal is treated as nonexpedited, it is imperative that the contractor obtain current status as to the patient's medical condition prior to issuing the reconsideration determination, as the beneficiary's condition may be ever changing. If during the processing of an appeal of a preadmission/preprocedure denial, the beneficiary received the denied service or supply, the contractor shall obtain the medical records and treat the appeal as nonexpedited.

2.4 Nonexpedited Denial

All other requests for reconsideration must be filed within 90 calendar days after the date of the initial denial determination. The request shall be considered to be filed as of the date the request is postmarked, or, if the request does not have a postmark, or if the postmark is illegible, it shall be considered filed on the date it is received by the contractor.

2.5 Contractor Requirement To Provide Information

With the exception of reconsiderations of concurrent review initial denial determinations, which are conducted by the TQMC contractor, when a reconsideration is requested and prior to the issuance of the reconsideration determination, the contractor shall provide all appealing parties an opportunity to examine and obtain documents and information upon which the initial denial determination is made. (Refer to Section 3, paragraph 4.5 regarding contractor information that shall be included in the appeal file provided to Defense Health Agency (DHA).) All parties to the reconsideration shall be informed that they may be charged the costs of photocopying and postage as established by DHA. All parties shall be informed of their opportunity to present documenting

materials or additional information for consideration.

2.6 Contractor Reconsideration Proceedings

2.6.1 Other Than Reconsiderations Of Concurrent Review Initial Denial Determinations

The contractor shall follow the following reconsideration procedures:

- The contractor shall give advance notice of the date that the reconsideration determination will be issued to allow sufficient time for the preparation and submission of additional information.
- The contractor shall reschedule the reconsideration if a party submits a written request presenting a reasonable justification for rescheduling.
- A reconsideration determination shall be based on the information that led to the initial determination, all information found in the medical record, and additional information submitted by the beneficiary or provider. If the beneficiary or provider fails to submit requested additional documentation, the reconsideration determination will be based on the available documentation.
- The beneficiary and/or provider must present the additional information in writing.
- Parties shall be informed that they will receive written notification of the reconsideration determination after the contractor has reviewed the case.

2.6.2 Reconsiderations Of Concurrent Review Initial Denial Determination

When the beneficiary remains an inpatient and files a timely request for a reconsideration, the contractor shall immediately notify the TQMC contractor by telephone, facsimile, or e-mail on the date of filing, and overnight mail to the TQMC contractor the complete medical record and all supporting documentation regarding the initial denial determination and any other documents provided by the beneficiary and/or provider. Facsimiles may be utilized in the event the documentation is not more than 10 pages in volume. The TQMC contractor shall review the request for reconsideration and notify the contractor and all parties of its decision regarding the request. (Refer to paragraph 3.1.1.)

2.6.3 Timing Of Contractor Determinations

The contractor shall complete reconsideration determinations and send written notices to the parties involved in accordance with the time frames set forth in Chapter 1, Section 3, paragraph 4.0.

2.6.4 Notice Of Contractor Determination

The contractor shall issue a written notice of the reconsideration determination. Refer to Section 3, paragraph 6.0 for the required content of the notice to the appealing party of the results of the reconsideration determination. Time frames for filing a request for a reconsideration by the TQMC contractor are addressed in Section 3, paragraph 6.2.8.1.

3.0 RECONSIDERATIONS BY THE TQMC CONTRACTOR

The TQMC contractor is responsible for reviewing requests from beneficiaries and/or providers for an appeal of a reconsideration when a contractor upholds an initial denial determination on reconsideration. The TQMC contractor is also responsible for issuing reconsideration determinations in concurrent review cases. The time frames for reconsideration requests set forth in paragraphs 2.3.2 and 2.4 also apply to reconsideration requests filed with the TQMC contractor.

3.1 Timing Of TQMC Contractor Reconsideration Determinations

3.1.1 Reconsideration Of Concurrent Review Initial Denial Determinations

The TQMC contractor shall complete a reconsideration determination for a concurrent review initial denial determination within two working days and shall notify all parties and the contractor of the reconsideration determination within three working days after the receipt of the reconsideration request from the contractor by the TQMC contractor. The contractor shall automatically provide to the TQMC contractor by facsimile, overnight mail, or e-mail, all required documentation on the day of the receipt of the reconsideration request. If the beneficiary is discharged while the concurrent review is being performed by the TQMC contractor, the TQMC contractor will return the case file to the contractor by overnight mail or e-mail with a letter advising the contractor that because the beneficiary has been discharged, a nonexpedited, retrospective reconsideration by the contractor is appropriate. The TQMC contractor will notify the appealing party, in writing, of the action taken. The contractor will accept the case as a nonexpedited reconsideration with the reconsideration receipt date being the date of receipt of the case file from the TQMC contractor.

3.1.2 Reconsideration Of A Preadmission/Preprocedure Reconsideration Denial Determinations

Within three working days of receipt of a request from a beneficiary for an expedited reconsideration, the TQMC contractor shall complete its review and notify all parties and the contractor of the results of the review. The TQMC contractor shall request from the contractor all documentation, including the medical record, regarding the initial denial and reconsideration determination. The contractor shall provide all requested documentation by overnight mail or facsimile. If, during the processing of an appeal of a preadmission/preprocedure denial, the beneficiary receives the denied services or supplies, the TQMC contractor shall obtain the medical record and treat the appeal as nonexpedited.

3.1.3 Non-Expedited Reconsiderations

The TQMC contractor shall complete reviews for all other requests for appeals of reconsideration denial determinations made by the contractor and notify all parties within 30 calendar days after the date of receipt of the reconsideration request. The TQMC contractor shall request from the contractor all documentation, including the medical record, regarding the initial denial and reconsideration determination within one day of receipt of the request for reconsideration. The contractor shall provide all requested documentation within five working days.

3.2 Notice

The TQMC contractor shall issue a written notice of the reconsideration determination using the suggested format and content set forth in Section 3, paragraph 6.0 as guidance.

3.3 Record

Refer to Section 3, paragraph 9.0 for the record of the reconsideration to be maintained by the TQMC contractor.

4.0 WAIVER OF LIABILITY POLICY

4.1 The contractor shall establish procedures that ensure the beneficiary and the provider are protected in instances where they did not know or could not reasonably have been expected to know that health care services rendered would not be covered as a result of denial determinations made by the contractor and the TQMC contractor. For information relating to Waiver of Liability, refer to the TRICARE Policy Manual (TPM), Chapter 1, Section 4.1.

4.2 For pharmacy claims, waiver of liability applies only to pharmaceuticals which are prescribed within the DoD P&T Committee guidelines and found retrospectively to be not medically necessary.

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