

(b) The requirements regarding re-openings, ALJ hearings and ALJ and attorney adjudicator decisions, Council review, and judicial review are set forth in subpart U of this chapter.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5125, Jan. 17, 2017; 83 FR 16750, Apr. 16, 2018]

§ 423.560 Definitions.

As used in this subpart, unless the context indicates otherwise—

Appeal means any of the procedures that deal with the review of adverse coverage determinations made by the Part D plan sponsor on the benefits under a Part D plan the enrollee believes he or she is entitled to receive, including delay in providing or approving the drug coverage (when a delay would adversely affect the health of the enrollee), or on any amounts the enrollee must pay for the drug coverage, as defined in § 423.566(b). Appeal also includes the review of at-risk determinations made under a drug management program in accordance with § 423.153(f). These procedures include re-determinations by the Part D plan sponsor, reconsiderations by the independent review entity, ALJ hearings, reviews by the Medicare Appeals Council (Council), and judicial reviews.

At-risk determination means a decision made under a plan sponsor's drug management program in accordance with § 423.153(f) that involves the identification of an individual as an at-risk beneficiary for prescription drug abuse; a limitation, or the continuation of a limitation, on an at-risk beneficiary's access to coverage for frequently abused drugs (that is, a beneficiary specific point-of-sale edit or the selection of a prescriber and/or pharmacy and implementation of lock-in, or); and information sharing for subsequent plan enrollments.

Drug Use means an enrollee is receiving the drug in the course of treatment, including time off if it is part of the treatment.

Enrollee means a Part D eligible individual who has elected or has been enrolled in a Part D plan.

Grievance means any complaint or dispute, other than one that involves a coverage determination or at-risk determination, expressing dissatisfaction

with any aspect of the operations, activities, or behavior of a Part D plan sponsor, regardless of whether remedial action is requested.

Other prescriber means a health care professional other than a physician who is authorized under State law or other applicable law to write prescriptions.

Physician has the meaning given the term in section 1861(r) of the Act.

Projected value of a Part D drug or drugs includes any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year. Projected value includes enrollee co-payments, all expenditures incurred after an enrollee's expenditures exceed the initial coverage limit, and expenditures paid by other entities.

Reconsideration means a review of an adverse coverage determination or at-risk determination by an independent review entity (IRE), the evidence and findings upon which it was based, and any other evidence the enrollee submits or the IRE obtains.

Redetermination means a review of an adverse coverage determination or at-risk determination by a Part D plan sponsor, the evidence and findings upon which it is based, and any other evidence the enrollee submits or the Part D plan sponsor obtains.

Representative means an individual either appointed by an enrollee or authorized under State or other applicable law to act on behalf of the enrollee in filing a grievance, obtaining a coverage determination, or in dealing with any of the levels of the appeals process. Unless otherwise stated in this subpart, the representative has all of the rights and responsibilities of an enrollee in filing a grievance, obtaining a coverage determination, or in dealing with any of the levels of the appeals process, subject to the rules described in part 422, subpart M, of this chapter.

Specialty tier: (1) Before January 1, 2022, means a formulary cost-sharing tier dedicated to very high cost Part D drugs that exceed a cost threshold established by the Secretary; and

(2) Beginning January 1, 2022, has the meaning given the term in § 423.104.

[70 FR 4525, Jan. 28, 2005, as amended at 73 FR 20507, Apr. 15, 2008; 74 FR 1546, Jan. 12, 2009; 82 FR 5125, Jan. 17, 2017; 83 FR 16750, Apr. 16, 2018; 86 FR 6119, Jan. 19, 2021]

§ 423.562 General provisions.

(a) *Responsibilities of the Part D plan sponsor.* A Part D plan sponsor must meet all of the following requirements.

(1) A Part D plan sponsor, for each Part D plan that it offers, must establish and maintain—

(i) A grievance procedure as described in § 423.564 for addressing issues that do not involve coverage determinations;

(ii) Use a single, uniform exceptions and appeals process which includes procedures for accepting oral and written requests for coverage determinations and redeterminations that are in accordance with § 423.128(b)(7) and (d)(1)(iv).

(iii) A procedure for making timely coverage determinations, including determinations on requests for exceptions to a tiered cost-sharing structure or to a formulary; and

(iv) Appeal procedures that meet the requirements of this subpart for issues that involve coverage determinations.

(v) Appeal procedures that meet the requirements of this subpart for issues that involve at-risk determinations. Determinations made in accordance with the processes at § 423.153(f) are collectively referred to as an at-risk determination, defined at § 423.560, made under a drug management program.

(2) A Part D plan sponsor must ensure that all enrollees receive written information about the—

(i) Grievance and appeal procedures that are available to them through the Part D plan sponsor; and

(ii) Complaint process available to the enrollee under the QIO process as set forth under section 1154(a)(14) of the Act.

(3) A Part D plan sponsor must arrange with its network pharmacies to distribute notices instructing enrollees how to contact their plans to obtain a coverage determination or request an exception. These notices must comply with the standards established in § 423.128(b)(7)(iii).

(4) In accordance with subpart K of this part, if the Part D plan sponsor delegates any of its responsibilities under this subpart to another entity or individual through which the Part D plan sponsor provides covered benefits, the Part D plan sponsor is ultimately responsible for ensuring that the entity or individual satisfies the relevant requirements of this subpart.

(5) A Part D plan sponsor must employ a medical director who is responsible for ensuring the clinical accuracy of all coverage determinations and redeterminations involving medical necessity. The medical director must be a physician with a current and unrestricted license to practice medicine in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

(b) *Rights of enrollees.* In accordance with the provisions of this subpart, enrollees have all of the following rights under Part D plans:

(1) The right to have grievances between the enrollee and the Part D plan sponsor heard and resolved by the plan sponsor, as described in § 423.564.

(2) The right to a timely coverage determination by the Part D plan sponsor, as specified in § 423.566 and § 423.568, including the right to request from the Part D plan sponsor an exception to its tiered cost-sharing structure or formulary, as specified in § 423.578.

(3) The right to request from the Part D plan sponsor an expedited coverage determination, as specified in § 423.570.

(4) If dissatisfied with any part of a coverage determination or an at-risk determination under a drug management program in accordance with § 423.153(f), all of the following appeal rights:

(i) The right to a redetermination of the adverse coverage determination or at-risk determination by the Part D plan sponsor, as specified in § 423.580.

(ii) The right to request an expedited redetermination, as provided under § 423.584.

(iii) If, as a result of the redetermination, a Part D plan sponsor affirms, in whole or in part, its adverse coverage determination or at-risk determination, the right to a reconsideration or