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**Received Date :** 06/29/2025 10:19 PM

**Comments Received :**

I appreciate CMS's efforts to collect more granular data on MA organization determinations and reconsiderations. This should further transparency with the clarifications to member appeals finalized in 4208-F regarding coverage (pre-service/concurrent) ODs and payment (post-service) ODs.

Many MAOs have not been recognizing that adverse ODs made after completion of unscheduled, often emergent, hospital services are ODs for which member and non-contracted provider appeal rights must be afforded. While CMS addressed the issue of inpatient level of care denials being ODs regardless of when the decision is made, there are other adverse ODs being made on the basis of medical necessity which MAOs are often not affording adverse OD appeal rights: ED facility fees, readmission stays, diagnosis validation, and line item bundling.

Regardless of the type of adverse OD, the biggest vulnerability that I see in this data collection is when the MAO issues an adverse OD but then fails to acknowledge the right of members and non-contracted providers under Subpart M to appeal that denial.

For instance, for inpatient level of care denials, multiple MAO compliance departments have concluded that members do not have appeal rights, so any member appeal for this denial is just ignored, without issuing a Notice of Dismissal. Sometimes, MAOs convert the member appeal into an internal MAO-provider dispute. NCP appeals are sometimes also converted into internal MAO disputes.

I think it is unlikely that the 4208-F clarifications alone will ensure that member and NCP appeals are routed appropriately. That did not happen after July 2024 when the Integrated Appeals Chapter Guidance was updated to clarify that the reasons for issuing a Notice of Dismissal were exhaustive and that MAOs must otherwise issue a substantive decision on the appeal (Section 50.8).

For this data collection, I believe the issue can be mitigated somewhat by including fields that may indicate that MAOs are ignoring appeals or converting them to a process outside of Subpart M. Instead of "Dismissal Rationale" it may help to get more granular such as

- a) Was a substantive decision made (alternatively, give defined choices for "Disposition")?
- b) Was a Notice of Dismissal issued to all proper parties, if applicable?
- c) What was the reason for the Notice of Dismissal, if applicable?
- d) Was the appeal converted into an internal Plan dispute?

Separately, to ensure data integrity, I suggest that CMS create a pathway that is independent of MAOs for appeals that may not be properly processed. There's a couple ways this could be done, such as 1) Instructing Maximus to accept reviews of ignored appeals when no Notice of Dismissal was issued and/or 2) Creating a web portal for members and their individuals on their behalf to directly enter complaints about unadjudicated and non-Dismissed appeals.

Thank you for the opportunity to comment.