DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations

SMDL #04-004

JULY 19, 2004

Dear State Medicaid Director:

This letter provides guidance to states concerning treatment under the Medicaid program of the discounts and $600 credit available to Medicare beneficiaries under the new Medicare-Approved Drug Discount Card. We are firmly committed to ensuring that Medicare beneficiaries eligible for the drug discount card and/or the Transitional Assistance program are able to get discounts and assistance with their drug costs without adversely impacting their other Federal benefits, as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) intended.

Authorized by the MMA, the Medicare-Approved Drug Discount Card offers Medicare beneficiaries negotiated prices that result in discounts off the regular price of prescription drugs. In addition, in both 2004 and 2005, certain low-income Medicare beneficiaries who have a discount card may also qualify for additional assistance in the form of a $600 credit (Transitional Assistance) that the beneficiary can use to pay for prescription drugs. Medicare beneficiaries who qualify for the $600 may also realize additional savings from prescription drug manufacturers who are partnering with the Medicare-Approved drug card sponsors. This partnership will provide significant discounts, and in some cases free drugs, to beneficiaries who have used up their $600 credit.

Section 1860D-31(g)(6) of the Social Security Act (the Act) directs that the availability of negotiated prices or Transitional Assistance received through the Medicare-Approved Drug Discount Card "shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." In other words, a person should not be disadvantaged under other Federal programs, including Medicaid, because he or she is getting a discount under a Medicare-Approved Drug Discount Card, and may also be getting a $600 credit to help pay for prescription drugs.

We are providing this guidance to implement section 1860D-31(g)(6) because the law changes the normal Title XIX rules in the case of Medicare beneficiaries who are enrolled in the Medicare-Approved Drug Discount Card and the Transitional Assistance programs who later become eligible for Medicaid. This policy becomes effective with the June 1, 2004, implementation of these programs. This guidance:

- applies specifically to states in which individuals can qualify for Medicaid by spending down excess income by incurring medical expenses, including states that cover the medically needy and states that use more restrictive eligibility criteria than are used by the Supplemental Security Income (SSI) program (known as 209(b) states);

- applies to every state's third-party liability policy in instances where a beneficiary with a Medicare-Approved Drug Discount Card later becomes eligible for Medicaid;

- applies only to discounts or subsidies associated with the Medicare-Approved Drug Discount Card; and

- does not apply to discounts or subsidies received through health insurance or under other drug discount or assistance programs. Therefore, such discounts or subsidies should not be treated as incurred medical expenses for purposes of determining eligibility or benefits for Medicaid.

Implementing Section 1860D-31(g)(6) of the Act

In states that cover the medically needy, and in states that use more restrictive eligibility criteria than are used by the SSI program (known as 209(b) states), individuals can qualify for Medicaid by spending down excess income (i.e., income above the state's income standard) by incurring medical expenses that can be deducted from their income. Therefore, ***to prevent the receipt of a discount or receipt of a $600 credit under the Medicare-Approved Drug Discount Card from having an adverse effect on a spenddown beneficiary's eligibility for Medicaid, any discount received and any portion of the $600 credit which is used to pay for prescription drugs must be treated as an incurred medical expense by the beneficiary for Medicaid spenddown purposes under both medically needy programs and in 209(b) states.*** Following are instructions on how to treat these items as incurred medical expenses.

$600 Transitional Assistance Credit

This applies to individuals who are receiving the $600 Transitional Assistance credit in addition to discounts under the Medicare-Approved Drug Discount Card.

For Medicaid spenddown purposes, any portion of the $600 credit for both 2004 and 2005 that is used to pay for prescription drugs should be treated as a medical expense incurred by the individual and applied as such per the regulations at 42 CFR 435.831 (applicable to states that cover the medically needy, including 209(b) states with medically needy programs), or regulations at 42 CFR 435.121 as they apply to 209(b) states. In calculating correct incurred medical expenses, all portions of the $600 expended will be accounted for when using the "pre-discount" drug pricing methodology as described below.

In addition, for Medicaid third party liability purposes, no portion of the $600 credit that is used to pay for prescription drugs should be treated as an available resource under Medicaid. This means that a beneficiary with a Medicare-Approved Drug Discount Card and Transitional Assistance who is also eligible for Medicaid does NOT have to spend the $600 credit before Medicaid will pay for the beneficiary's prescription drugs. Further guidance on this point will be forthcoming regarding those beneficiaries who access their $600 credit through the specially-endorsed Medicare-approved discount drug cards participating with long term care facility pharmacies and with Indian Health Service, Tribes and Tribal Organizations, and Urban Indian Organization pharmacies. All these drug card sponsors are not yet fully underway.

Discounts Under the Medicare-Approved Drug Discount Card

This applies to any Medicaid spenddown beneficiary who has a Medicare-Approved Drug Discount Card, regardless of whether he or she is also receiving a $600 Transitional Assistance credit.

The incurred medical expense is the amount the individual would have had to pay in the absence of the Medicare-Approved Drug Discount Card. For purposes of establishing the amount of the incurred medical expense, the "pre-discount price" of a prescription is what the individual would have had to pay if he or she were not enrolled in the Medicare-Approved Drug Discount Card. This information may be available from the receipt the individual receives when paying for a prescription.

If information about the pre-discount price of a prescription drug is not readily available, the state can use receipts for prescriptions which the individual purchased before enrolling for a Medicare-Approved Drug Discount Card to establish the pre-discount price of a prescription. The state may also call the pharmacy where the prescription was filled to find out the pre-discount price of a prescription.

If the state cannot determine the actual pre-discount price of a prescription drug, the state should use an imputed value of $48.17 (per prescription) as a substitute for the actual pre-discount price. This amount represents the national average cost per prescription for the cash-paying customer in 2003 based on CMS' Office of the Actuary analysis of data from IMS Health, National Prescription Audit for 2003.

In other words, in the absence of an actual pre-discount price, a prescription purchased by a beneficiary under a Medicare-Approved Drug Discount Card will be assumed to have a pre-discount price of $48.17 (per prescription), and that amount will be treated as the incurred medical expense for that prescription for Medicaid spenddown purposes. However, if a beneficiary can provide evidence satisfactory to the state that he or she paid more than the imputed value of $48.17 for a prescription, the state should use the amount the beneficiary can document as the incurred medical expense.

Post-Eligibility Treatment of Income

Under post-eligibility treatment of income, Medicaid beneficiaries who are in medical institutions are required to contribute at least some of their income toward the cost of their care. However, incurred medical expenses are deducted from the person's income in a manner similar to the way they are deducted from income under spenddown to determine how much of the person's income must actually be contributed. If a Medicaid spenddown beneficiary who has a Medicare-Approved Drug Discount Card, or both a discount card and the $600 credit, is subject to post-eligibility treatment of income while in a medical institution, the above guidance on treatment of a discount and the $600 credit as incurred medical expenses under spenddown is equally applicable to treatment of discounts and the $600 as incurred medical expenses for post-eligibility treatment of income purposes. In addition, neither the $600 credit nor any discount savings arising from the drug card should be counted as income in the post-eligibility process.

Discount Card Enrollment Fee

Medicare beneficiaries may be charged an enrollment fee of up to $30 per year for the Medicare-Approved Drug Discount Card. Under certain circumstances the enrollment fee may be paid by the federal or state government rather than by the beneficiary. Any annual fee paid by a Medicaid spenddown beneficiary him or herself for a Medicare-Approved Drug Discount Card must be treated as an incurred medical expense and deducted from the individual's income when determining his or her eligibility for Medicaid. However, any annual fee paid by the Federal or state government should not be treated as an incurred medical expense.

Reopening and Review of Related Casework

Individuals whose Medicaid eligibility was denied or delayed or whose post-eligibility treatment of income calculations were adversely impacted since June 1 because this new guidance was not applied must have these items reopened and reviewed. Federal financial participation is available at the appropriate matching rate for the costs of reopening and reviewing applications and claims, and for provision of Medicaid to those found eligible as a result of this change in Federal policy.

Thank you for your prompt attention to this matter. If you have any questions, please contact Roy Trudel of my staff at 410-786-3417.

Sincerely,

/s/

Dennis G. Smith
Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
For Medicaid and State Operations

Kathryn Kotula
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
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DRUG CARD AND MEDICAID SPENDDOWN

Qs AND As

Q: What is a Medicaid "spenddown?"

A: States with medically needy programs and states that determine Medicaid eligibility of the aged, blind, and disabled using more restrictive eligibility criteria than are used by the supplemental security income (SSI) program (known as 209(b) states) set an income limit that a Medicaid beneficiary may not exceed. Under the spenddown process, State Medicaid agencies, when evaluating applicants whose income is higher than the income limit, must count these applicants' out-of-pocket health care expenses (or their liability to pay such incurred expenses,) and deduct those "incurred medical expenses" from the applicant's income to see if the person's income is low enough to qualify for Medicaid. Thus, individuals who are not eligible for Medicaid because their income is too high can become eligible when their incurred medical expenses offset their excess income. The act of counting up these incurred medical expenses and deducting them from income is called "spending down" to the income limit. Hence the term "spenddown."

Q: Can Medicare beneficiaries who apply for Medicaid in states that use a spenddown methodology qualify for a drug card? How would drug card eligibility work for them?

A: Yes. Individuals who are spending down excess income but who have not spent down to the income level and who meet the income thresholds for the $600 credit and who are not currently receiving Medicaid outpatient drug coverage or most other outpatient drug coverage from, for example, group health or retirement plans, may apply for the card and the $600 credit. Further, individuals will remain eligible for the card and the $600 credit even if they later meet their spenddown and gain access to Medicaid drug coverage.

Q: Will the $600 credit or discounts available to card holders prevent or delay an individual's eligibility for Medicaid under a spenddown?

A: No. Neither the $600 credit nor the discount prices will prevent or delay an individual's eligibility for Medicaid. As described below, the discount and the $600 credit will be treated as incurred medical expenses for purposes of Medicaid spenddown, and there will be no delay in the onset of Medicaid eligibility.

Q: Will the price of prescription drugs purchased with the Medicare-approved drug discount card be deducted from income as an incurred medical expense when determining someone's eligibility under Medicaid spenddown?

A: Yes. As described below, the price of prescription drugs purchased with the Medicare-approved drug discount card will be treated as an incurred medical expense and deducted from the person's income when determining his or her eligibility under Medicaid spenddown rules.

Q: What part of the $600 credit counts toward incurred medical expenses for spenddown?

A: Any discount received and any portion of the $600 credit which is used to pay for prescription drugs must be treated as an incurred medical expense by the beneficiary for Medicaid spenddown purposes. That methodology is described below.

Q: How will Medicaid calculate the applicant's level of drug spending to apply to spenddown?

A. If at all possible, the applicant should provide a receipt from the pharmacy that shows the "pre-discount" price of the drug. The "pre-discount" price is the price the person would have had to pay for the drug if he or she did not have a Medicare-Approved Drug Discount Card. If the applicant doesn't have such a receipt, the state Medicaid program could call the pharmacy directly to get the "pre-discount" price of the drug, or the state can use receipts for prescriptions that the individual purchased before enrolling for the card.

If no information about the actual 'pre-discount" price is available, the state Medicaid program will use an "imputed" value based on a national average amount paid for prescriptions as the amount of the incurred medical expense for the prescription drug. However, if the applicant can provide evidence satisfactory to the state Medicaid program that he or she actually paid more than the imputed value for a particular prescription, the amount the applicant can document will be used as the incurred medical expense.

Q: If prescription drug or beneficiary co-payment amounts are paid by a State Pharmacy Assistance Program (SPAP), can that cost be counted toward incurred medical expenses for spenddown?

A: Yes. The cost of prescription drugs paid in whole or in part with SPAP funds or funds from any other public program of the state or political subdivision of the state that consists solely of state money (e.g., no federal funds are involved) can be counted as an incurred medical expense for Medicaid spenddown purposes.

Q: How many states have a program under which a beneficiary may become eligible by using spenddown?

A: 36 states and the District of Columbia use spenddown programs. 32 states and the District have a medically needy program: Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,

Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. 11 states use spenddown under the 209(b) provisions: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma and Virginia.

Q: What is "Pay In" spenddown and how does it work?

A: A state that covers the medically needy may choose to use the "pay in" spenddown option to use in tandem with its regular spenddown methodology. Pay in spenddown permits States to allow medically needy families to meet the spenddown requirements through cash payments to the State as an alternative or in addition to incurring expenses for medical or other types of remedial care. That means the family could become eligible at the beginning of each budget period rather than having to wait until they have incurred enough expenses.

Pay in spenddown is voluntary on two levels. States can elect to offer a pay in spenddown system, but use of pay in spenddown is optional for each medically needy individual . Thus, although an individual state could offer a pay in system, not all medically needy individuals are necessarily meeting their spenddown through that system. Some may elect to use the traditional spenddown methodology.

Q: Which States permit Pay In spenddown?

A: As far as we know, only the following 5 states have elected the Pay In spenddown option. They are: Minnesota, Montana, New York, Utah, and Wisconsin.

Q: If a State has elected the Pay In spenddown method, can that beneficiary get a drug card?

A: Only if a dually eligible beneficiary's Medicaid coverage lapses. Pay in spenddown allows the beneficiary to pay-in a proxy for their incurred medical expenses at the beginning of the State's medically needy budget period. In theory, this eliminates the traditional gap in medically needy coverage. Medicaid coverage would be continuous with no lapse for beneficiaries who pay in on a timely basis. As a beneficiary with Medicaid outpatient drug coverage, he or she would not be eligible for a drug card. However, any time a dually eligible beneficiary's Medicaid coverage lapses, during that window, he or she would be eligible to apply for the drug card and the $600 credit.

Q: If an individual gets the $600 credit from Medicare and later becomes eligible for Medicaid, does he lose the $600 credit?

A. No, individuals who become eligible for Medicaid after receiving the $600 credit will not lose the credit. In this case, Medicaid becomes the primary payer for drugs covered by Medicaid. The individual can save whatever remains of the $600 credit to use in the future should he lose Medicaid benefits (or to use for drugs that are not covered by Medicaid), up until the time that outpatient drug coverage becomes available from the new Medicare Prescription Drug Plans.

Further guidance on this point will be forthcoming regarding those beneficiaries who access their $600 credit through the specially-endorsed Medicare-approved discount drug cards participating with long term care facility pharmacies and with Indian Health Service, Tribes and Tribal Organizations, and Urban Indian Organization pharmacies. All these drug card sponsors are not yet fully underway.

Q. What if a beneficiary in spenddown applies for the drug card or the $600 credit and receives a letter saying they were rejected because data shows that they are receiving a Medicaid outpatient prescription drug benefit? What if that's not true and the beneficiary did not have access to Medicaid drugs at the time they applied?

A. The beneficiary should follow the instructions in the denial letter for a reconsideration. They need to provide the reconsideration staff with documentation that shows their Medicaid benefits had stopped during the time they applied for the drug card or the $600.

----- End of Qs and As -----

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

July 18, 2004

M-04-18

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Joshua B. Bolten
Director

SUBJECT: Medicare Modernization Act and Federal Programs

On December 8, 2003, the President signed the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), which will offer all Medicare beneficiaries access to subsidized drug coverage beginning in 2006 and which also makes other important improvements to the program.

One provision of the MMA implements a temporary, Medicare-endorsed drug-discount card program through which Medicare beneficiaries are pooling their purchasing power to secure substantial discounts on their medicines. Medicare beneficiaries at or below 135 percent of the federal poverty level (FPL) can qualify for $600 in additional assistance for the remainder of 2004 and another $600 in 2005. The drug discounts and $600 in transitional assistance became available on June 1.

A provision of the MMA clarifies the potential interaction between the drug card/transitional assistance and other federal assistance programs:

> "The availability of negotiated prices or transitional assistance under this Section shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." [1860D-31(g) (6) of the Social Security Act]

Medicare beneficiaries should not see *any* reduction in other federal benefits because they have signed up for a Medicare-approved drug card or receive transitional assistance. Neither the discounts nor the subsidy should be counted as income *or otherwise taken into account* either in determining whether an individual is eligible for assistance or in determining the amount of such assistance. For example, the $600 in transitional assistance should not be considered as income, and should not be deemed to reduce the holder's medical expenditures otherwise deductible from countable income when determining eligibility or benefits.

I am asking that, by July 26, any agency affected by this provision develop and implement clear guidance to assure that federal programs within your agency are in compliance with the MMA provision cited above, and provide a copy of your agency's guidance to CMS with a copy to your OMB contact. No Medicare beneficiaries should be denied access to benefits or services or have those benefits or services reduced because they have chosen to enroll in a Medicare-approved drug card and transitional assistance.

If you have questions, or would like further information on the Medicare-endorsed drug card and transitional assistance, please contact Timothy Trysla of the Centers for Medicare and Medicaid Services at 202-690-6726.