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

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Center for Medicaid and CHIP Services

May 2, 2017

MEDICAID DRUG REBATE PROGRAM NOTICE **Release No. 180**

For State Technical Contacts

Clarification on Medicaid Reimbursement and Rebates for Drugs Purchased Through the Federal Supply Schedule

This guidance provides clarification on the Centers for Medicare & Medicaid Services' (CMS) reimbursement and rebate policies for drugs purchased through the Federal Supply Schedule (FSS). CMS previously issued Manufacturer Release #53 on February 27, 2002 and State Release #113 on March 12, 2002 to provide guidance regarding Medicaid-reimbursed drugs purchased through the Federal Supply Schedule (FSS).

These releases stated, in part, that Indian Health Services (IHS) facilities should not bill drugs that are purchased from the FSS to a third party payor, such as Medicaid. The releases further stated that "IHS facilities should maintain a separate inventory of drugs purchased at open market prices dispensed to Medicaid patients which can then be billed to Medicaid for Medicaid eligible patients." Additionally, the releases explained that manufacturer rebates are not authorized for drugs that are purchased through the 340B program or the FSS; however, drugs purchased through the open market are eligible for manufacturer rebates.

The purpose of this release is to inform states that Manufacturer Release #53 and State Release #113 are no longer valid. There is no statutory or regulatory provision that precludes drugs purchased through the FSS from being billed to and reimbursed by state Medicaid agencies when they are dispensed to Medicaid beneficiaries. Additionally, there is no statutory or regulatory preclusion barring states from billing manufacturers for rebates for these drugs when they are dispensed to Medicaid patients.

CMS reminds states that Medicaid payment for drugs purchased through the FSS should be consistent with the actual acquisition cost (AAC) requirements outlined in our regulation at 42 CFR 447.502, which was adopted in the Covered Outpatient Drug final rule with comment (CMS-2345-FC), and guidance issued in the February 11, 2016 State Medicaid Director's letter titled *Implementation of the Covered Outpatient Drug Final Regulation Provisions Regarding Reimbursement for Covered Outpatient Drugs in the Medicaid Program.* Except in cases when Medicaid agencies reimburse using the IHS Office of Management and Budget (OMB) encounter rate, covered outpatient drugs purchased through the FSS, by facilities such as IHS and Veteran Homes, should be reimbursed for such drugs at no more than the FSS rate consistent with the AAC requirements. For drugs that are purchased outside the FSS,

reimbursement will be no more than the facilities' AAC. Drugs that are purchased by these facilities through other sources than the FSS should be reimbursed at the actual acquisition costs for these drugs based on other credible pricing benchmarks. States must include these reimbursements in the Federal Upper Limit payment calculations required under 42 CFR 447.512.

Finally, states should bill manufacturers for rebates on drugs purchased through the FSS that are dispensed to Medicaid beneficiaries and paid separately from the encounter rate. Only drugs that have been purchased through the 340B drug program that are dispensed to Medicaid patients are exempt from manufacturer rebates.

Questions regarding the Medicaid Drug Rebate Program can be submitted through the drug policy resource mailbox at RxDrugPolicy@cms.hhs.gov.

Sincerely,

/s/

Michael Nardone
Director
Disabled and Elderly Health Programs Group