

Notice of Action: Reduction of Benefits

Beginning January 1, 2006 individuals who are eligible for Medicare will no longer receive their prescription drug coverage under Medicaid. 42 CFR Part 431 Subpart E requires the State agency to issue a Notice of Action if Medicaid covered services will be terminated or reduced. States are legally obligated to issue a Notice of Action to dual eligibles advising them that their prescription drug coverage under Medicaid will be reduced or terminated effective January 1, 2006.

This Notice of Action must be sent at least 10 days before the date of action pursuant to 42 CFR §431.211. While there is no provision regarding the maximum amount of time prior to the action within which the notice may be sent, we recommend states issue the Notice of Action no earlier than 45 days before the effective date of the action.

Under 42 CFR §431.220(b), a hearing does not need to be granted if the sole issue being appealed in the result of a change in law which adversely affects some or all recipients. Additionally, 42 CFR §431.230(a) provides that benefits need not be continued pending the appeal decision when the sole issue is such a change in law. If the appeal is for other reasons, such as the application of the law to the individual, or if there is another factual issue, then a hearing must be granted and benefits continued pending the decision. If the agency is sustained in its action, any expenditure for prescription drugs may be recouped from the recipient.

States have requested guidance regarding the content of the Notice of Action. CMS has developed suggested language that States may choose to use when composing their notices. States are encouraged to adapt this model as appropriate for their specific programs. If states choose to develop an alternate notice, the notice must include the following:

- The benefits that will be reduced;
- the effective date of the action;
- the reason for the reduction; and
- appeal rights.

If States choose to develop an alternate notice, it is strongly recommended that the notice include information about how prescription drugs will be covered effective January 1, 2006 as well as contact information for Medicare Part D. As always, all notices must conform to the requirements of the ADA and Title VI.

Reduction of Benefits Notice

Important Information about Your Drug Coverage

Date: <No later than 12/21/05>
<Header or footer must include
contact information>

Dear _____:

We are sending you this letter to let you know that starting January 1, 2006 Medicare will pay for most of your prescription drugs. Because Medicare will pay for most of your prescription drugs <State Medicaid program> must stop paying for the drugs that are covered by Medicare.

We cannot pay for your Medicare covered drugs after January 1, 2006 because the law at Section 1935 (d)(1) of the Social Security Act requires us to stop paying as soon as Medicare starts to pay. This law applies only to people who have both Medicare and <State Medicaid program>. Our files show that you have both Medicare and <State Medicaid program>. If you think this is wrong, call your eligibility worker right away.

<<OPTIONAL FOR STATES WITH SPA TO COVER EXCLUDED DRUGS: There are certain kinds of drugs that Medicare will not cover. <State Medicaid program > will still cover some of these drugs for you. <States may insert description of covered drugs or include reference to a list of covered drugs> When you go to the pharmacy to pick up your prescriptions, show the pharmacist both your <State Medicaid program> card and the card from your Medicare drug plan.>>

It is important for you to know how to get your medicines. To get your prescriptions paid for through Medicare, you need to join a Medicare drug plan. If you have not already joined a plan, or if you need help choosing the plan that's right for you, call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048. Or, you can call <insert name of SHIP>, your State Health Insurance Program (SHIP) at <insert SHIP telephone number>. If you don't choose a plan yourself, Medicare will put you in a plan in your area. If you don't like that plan, you will be able to switch to another plan at any time.

You have the right to request an appeal if you think this change is wrong, but you will have a hearing only if you think the law does not apply to you or if you think we do not have the right facts about you. If you ask for an appeal because you think the law is wrong, your appeal will be decided without a hearing. If you want to appeal this action, please read <the back of this letter/the information below>.

<<Include State-specific information regarding alternative formats under the ADA and language options under Title VI.>>