



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

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cc:

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