



CMA Weekly Alert – June 9, 2005

WILL MY PRESCRIPTION DRUG BE COVERED UNDER MEDICARE PART D?

People with Medicare, along with their families and their advocates, continuously raise concerns about whether the prescription drugs they take will be paid for under the new Medicare prescription drug benefit. The concerns are particularly important for vulnerable populations who take multiple prescriptions and/or who currently get their prescriptions through Medicaid.

The Centers for Medicare & Medicaid Services (CMS) recently issued some clarifications concerning payment for and access to prescriptions taken by nursing home residents, by children who are dually eligible for Medicare and Medicaid (dual eligibles), and by dual eligibles who require drugs that are excluded from Part D coverage.

Emergency supply of non-formulary drugs for nursing facility residents

In a new Q&A, CMS states that it will **require** that all Part D plans “cover a temporary supply of non-formulary part D drugs [for nursing home residents] while an exception is being adjudicated.” CMS describes the new Q&A as a clarification of its Long-Term Care Guidance (March 16, 2005), which “recommended,” but did not require, that Part D plan sponsors consider a one-time temporary or emergency supply of non-formulary prescription drugs for nursing home residents. According to the Q & A, the new clarification is based on CMS’ discussion with the long-term care industry and its understanding of current industry standards.

The Q&A appears to suggest that a beneficiary will receive a temporary supply of non-formulary drugs only if she files for an exception; it is unclear whether plans will be required to provide temporary supplies of non-formulary drugs automatically without filing an exception during the transition to Part D that will take place next fall. In fact, it is unclear whether beneficiaries will even be able to file for such an exception before Part D goes into effect in January 2006. It is also unclear from the Q&A whether the first-fill obligation applies to transitions such as the common transition when a resident moves from Medicare Part A coverage to another form of payment.

Note, also, that the above Q&A, which requires plans to provide an emergency supply of a drug during the exceptions process, applies only to nursing home residents and not to dual eligible individuals in general. Thus, it does not appear that dual eligible children and adults who are not nursing home residents will be entitled to an emergency supply of their medication pending the exception.

Interaction of EPSDT and Part D for full-benefit dual eligible children

EPSDT, the Early and Periodic Screening, Diagnostic, and Treatment service, is a Medicaid program for people under the age of 21. It provides comprehensive and preventive child health services, including periodic screening, vision, dental, and hearing services, as well as other

medically necessary health services, including prescription drugs, paid for under Medicaid. CMS states in another new Q&A that “Medicaid, including its EPSDT benefit, will not pay for drugs which could be covered under Medicare Part D, for full-benefit dual eligible children. This will be the case regardless of whether these drugs are covered under the plan’s Part D formulary.”

The Q&A explains that revisions to the Medicaid statute made by the Medicare Modernization Act of 2003 and its implementing regulations prevent a state Medicaid program from paying for any drug that could be covered under Part D, regardless of whether the drug is on a particular drug plan’s formulary. It further states that, to avoid a “coverage gap for Medicaid beneficiaries,” Part D plans are required to cover medically necessary non-formulary drugs and to have a transition plan for enrollees who are transitioning from Medicaid to Part D. However, earlier guidance issued by CMS indicates that beneficiaries may have to use the exceptions process to get coverage for medically necessary non-formulary drugs.

Medicaid coverage of prescriptions not covered under Medicare Part D

Medicare Part D specifically excludes from coverage certain drugs, including benzodiazepines and barbiturates, which are sometimes used to treat generalized anxiety, insomnia and seizure disorders in older people. As a result, these drugs will not be included on Part D plan standard formularies.

However, states have the option of providing Medicaid coverage for the excluded drugs and will receive federal financial participation (FFP), or federal payment, if the drugs are covered. CMS, in a State Medicare Directors letter issued June 3, 2005, “asks state Medicaid programs that cover these excluded drugs to consider continuing this coverage for all Medicaid recipients, including full benefit dual eligibles, after the transition of dual eligibles to the Medicare drug benefit.”

The letter clarifies two points: First, a state cannot provide coverage for these drugs for some categories of Medicaid-eligible people and not for others. For example, a state cannot cover these drugs for every full-benefit Medicaid recipient except dual eligibles; neither can the state cover the drugs only for dual eligibles but not for Medicaid-only individuals. Second, a state may cover the drugs in the same manner as provided for Medicaid recipients who are not dual eligible or through an arrangement with prescription drug plans or Medicare Advantage prescription drug plans.

CMS posts its Q&As about Medicare Part D at
<http://www.cms.hhs.gov/medicarereform/medicarereformfaqs.asp>.

CMS posts its State Medicaid Directors letters at
<http://www.cms.hhs.gov/states/letters/smd060305.pdf>.

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