



CMA Weekly Alert – June 29, 2006

PAYING FOR DRUGS WITH THE INCURRED MEDICAL EXPENSE DEDUCTION

Help for Some Medicaid Beneficiaries

Medicaid beneficiaries who live in nursing homes or in assisted living facilities under a home and community-based waiver are ordinarily required to pay most of their income to the facility as their “share of cost.” Nonetheless, a provision in the Medicaid law allows Medicaid beneficiaries to deduct the costs of certain medical expenses from the amount they must pay for their nursing home or assisted living facility stay. When a beneficiary uses this “incurred medical expense deduction,” the state Medicaid agency makes up the lost amount in its own payment to the nursing home or assisted living facility. The provider gets the same Medicaid rate that it would have gotten if the beneficiary had not used the deduction, but more of the rate is paid by the state, and less by the beneficiary.

In calculating a Medicaid beneficiary’s share of cost for a nursing home or assisted living stay, the Medicaid law requires states to allow a beneficiary to pay for health insurance premiums, deductibles, and coinsurance, without any limitations on those payments. It also allows a beneficiary to deduct the costs of medical services that are recognized by state law but not covered by the state’s Medicaid plan. The deduction has most often been used by beneficiaries to pay for prescription drugs, eyeglasses, hearing aids, and dentures that their state has not included in its Medicaid program or that exceed the state’s coverage. The deduction – called the “incurred medical expense deduction” – is also useful for getting prescription drugs that are not covered by, or are excluded from, a resident’s Part D drug plan.

Use of the Incurred Medical Expense Deduction

Non-Formulary Drugs

Each Part D plan identifies in its formulary the drugs that it will cover for plan members. If a physician determines that the nursing facility or long-term care beneficiary needs a particular drug that is not included in the formulary of the beneficiary’s plan, the resident may file for an **exception** so that the Plan will pay for that drug for that beneficiary. If the beneficiary does not persuade the Plan that the non-formulary drug is “medically necessary,” the beneficiary may file an **appeal**. The beneficiary can use the medical expense deduction while using both the exceptions and appeals processes.

In addition, if the beneficiary loses both the exception and the appeal, and the physician continues to believe that the non-covered drug is medically necessary and to prescribe it, the beneficiary can use the medical expense deduction to purchase the drug.

Excluded Drugs

The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) excludes certain drugs from coverage by Part D plans. Medicaid programs can cover these excluded drugs, but are not required to cover them. A beneficiary who is prescribed an excluded drug that the state Medicaid program does not cover may use the incurred medical expense deduction to purchase the drug.

Paying Premiums for a More Comprehensive Part D Plan

The incurred medical expense deduction may also be used to pay premiums for a more comprehensive Part D plan. Beneficiaries who are dually eligible for Medicare and Medicaid are randomly and automatically assigned to low-cost Part D plans called benchmark plans. Beneficiaries can use some of their income to pay premiums for a more comprehensive Part D plan – for example, a prescription drug plan providing enhanced alternative coverage – that covers drugs that are otherwise excluded from the standard benchmark plans.

Paying Co-Payments During the First Month in the Nursing Home as a Medicaid Beneficiary

Although nursing home residents (but not beneficiaries receiving services in the community) do not have to pay co-payments for their prescription drugs, the exemption from co-payments does not begin until the beneficiary has been institutionalized in a nursing facility for a full calendar month *as a Medicaid beneficiary*. The delayed exemption means that a beneficiary who is admitted to a nursing facility as a Medicaid beneficiary on June 3, for example, will be charged co-payments until August 1. If the beneficiary is admitted on June 3 as a Medicare beneficiary and Medicare pays for his or her care until July 3, when Medicaid begins to pay for the stay, the beneficiary will be charged co-payments from July 3 until September 1. The Centers for Medicare & Medicaid Services (CMS) recognizes that such beneficiaries can use their incurred medical expense deduction to pay the co-payments. Question ID 7042 (Apr. 20, 2006).

Eligibility For The Incurred Medical Expense Deduction

The incurred medical expense deduction is available only to Medicaid beneficiaries who have income such as Social Security or a private pension that they use to contribute to the cost of their long-term care in the nursing home or assisted living facility. If their only income is SSI, they have no income to protect for non-covered medical care expenses and cannot use this deduction. Most nursing home residents are medically needy Medicaid beneficiaries and have income to use for the incurred medical expense deduction.

How Beneficiaries Can Use This Deduction

After determining that an individual is financially eligible for Medicaid, a state makes a second “post-eligibility” determination to calculate the amount of money the person must contribute to the cost of care. The Medicaid law establishes a mandatory deduction for “incurred expenses

for medical or remedial care,” including health insurance premiums and expenses for services recognized by state law but not covered by the state plan.

States may use either the actual expenses incurred by a beneficiary or expenses that are projected for a period of no more than six months. While a state may set reasonable limits on these medical expenses, it may not set overall dollar limits (such as \$50 per month) nor may it impose a limit on the number of services or items that the beneficiary could deduct each month (such as a maximum of three drugs). States may not set any limits on the health insurance premiums, deductibles, or coinsurance charges.

If a state has failed to implement, or has improperly implemented, the incurred medical expense deduction, advocates may negotiate with the state about the deduction or, if negotiations fail, may consider litigation to ensure that the deduction is available .

Law

42 U.S.C. §§ 1396a(a)(17), 1396a(r)(1)(A)(i), (ii)

Frequently Asked Question ID 7042, http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_adp.php?p_faqid=7042&p_created=1145561777&p_sid=emgVRMai&p_accessibility=0&p_lva=&p_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9MSZwX3Byb2RzPTAmcF9jYXRzPSZwX3B2PSZwX2N2PSZwX3NIYXJjaF90eXBIPWFuc3dlcnMuc2VhcmNoX25sJnBfcGFnZT0xJnBfc2VhcmNoX3RleHQ9NzA0Mg**&p_li=&p_topview=1.

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