



CMA Weekly Alert - January 17, 2007

PART D YEAR ONE: STILL MUCH TO BE DONE

After one year's experience with Medicare Part D, many people remain confused and frustrated by the complexity and limitations of the benefit. Problems are difficult to resolve because of system failures, complicated data-sharing requirements among multiple entities, lack of useful and standardized information about plan benefits and appeal processes, and regulatory limitations that are more stringent than required by law.

The Center for Medicare Advocacy has prepared a [Status Report](#) based on the experiences of advocates and beneficiaries over the first year of Part D. The beneficiary stories in the Report are illustrative of the many beneficiaries who are experiencing problems and high costs due, in large part, to the lack of uniformity in Medicare Part D. The stories focus on particular aspects of Part D implementation – the failure of systems to ensure that low-income beneficiaries are enrolled in plans and receive their subsidies, the lack of useful information about benefit limitations to help beneficiaries plan, the failure of the system for withholding plan premiums from beneficiaries' Social Security checks, and the lack of uniform policies and procedures for seeking exceptions to formulary limitations.

Reflection on the issues underlying these problems confirms that beneficiaries would be better off with a redesigned benefit that is standardized, available throughout the country, and administered through the traditional Medicare program. Such a system would be more valuable for more beneficiaries and more cost-effective for taxpayers.

Accordingly, the Center for Medicare Advocacy continues to call for systemic changes to Part D. Our key recommendations include the following:

Recommendations for Congress:

1. Congress should redesign Medicare Part D to create a benefit that is standardized, available throughout the country, and administered through the traditional Medicare program. Such a system would be more valuable for more beneficiaries and more cost-effective for taxpayers.
2. Congress should eliminate the Donut Hole. If the Donut Hole is not eliminated, Congress should, at a minimum, authorize payments by AIDS Drug Assistance Programs (ADAPs) programs and pharmaceutical assistance program (PAPs) to count towards the beneficiary out-of-pocket spending limit.

3. Congress should require Part D plans to give deference to the opinion of the beneficiary's attending physician when making coverage decisions and should require CMS to delete the provision to the contrary in its regulations [42 CFR§ 423.578(f)].

4. Congress should authorize Part D coverage for off-label uses of drugs that are supported by peer-reviewed studies, are proven safe and effective over a substantial period of time, are covered by the beneficiary's state Medicaid program, or are listed in one of the three compendia currently included in the Medicare Act.

5. Congress should hold oversight hearings on the implementation of Part D. The hearings should include an inquiry into the special problems of dually eligible beneficiaries, the withholding of premiums by plans and Social Security, and CMS's role in setting and enforcing standards for plan participation.

6. Congress should require CMS to expeditiously establish a full system of real time data-sharing among all entities involved in Part D. Congress should require CMS to report on its strategies to resolve these problems effectively and within a specific time period, and should require periodic status reports from CMS.

Recommendations for the Centers for Medicare & Medicaid Services (CMS)

1. CMS should create a real time data-sharing system among all entities involved in Part D, and develop mandatory fail-safe systems to ensure that persons who are dually eligible for Medicare and Medicaid do not experience gaps in either their drug coverage or their low-income subsidy.

2. CMS should expand its point of service (POS) system to make its coverage available at the pharmacy for all dually eligible persons who experience plan enrollment and related drug dispensing problems at the pharmacy. Further, CMS should require pharmacies to use the POS system, and hold pharmacies harmless for good faith billings to the POS that turn out to be incorrect.

3. CMS and Part D plans should be required to provide beneficiaries with clear and accurate information about Part D, individual plan offerings, and in particular, about the Donut Hole coverage gap. This information should include the following:

- Materials from CMS and the enrollee's plan that explain how the initial coverage limitation and beneficiary out-of-pocket expenses, including Donut Hole payments, are calculated should be mailed to beneficiaries;
- Monthly statements that clearly indicate the total amount of payments that have been made that count towards the individual's initial coverage limit and beneficiary out-of-pocket responsibilities should be mailed to beneficiaries; and
- Monthly statements that indicate, after the initial coverage limit has been reached, all costs that continue to count towards the out-of-pocket limit in the Donut Hole and how much more is needed to reach catastrophic coverage should be mailed to beneficiaries.

4. CMS should require plans to provide a written coverage determination electronically at the pharmacy whenever a drug is not covered. The written coverage determination must explain why the plan will not pay for a drug, describe beneficiary appeal rights, and explain how to request the next level of review.

5. CMS should ensure that Part D plans comply with required appeals and grievance processes, that plan call centers respond appropriately to beneficiaries, and that Medicare “customer service” representatives provide accurate information and keep track of beneficiary complaints.

6. CMS should exercise its enforcement authority to take actions against Part D plans that do not provide adequate notice, fail to meet the regulatory time frames for deciding a coverage determination or an appeal, or fail to train their call center staff adequately.

Medicare is the most successful social insurance program in our nation’s history. The Center for Medicare Advocacy urges our policymakers to continue that success, rather than derail it. Congress should redesign Part D using the real Medicare model rather than allowing it to be scattered to the whims of private plans. Create a single, nationally uniform program equally available to all who qualify; a program like the one which has successfully served older people and those with disabilities for decades.

Click here to [print a .pdf of the full report](#).

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