



TrueCare Pharmacy Legislative Roundup

The Voice of Independent Pharmacy in Texas - July 2005

Critics Ask The Question: Are New Rules On Medicare Drug Coverage A

PRESCRIPTION FOR DISASTER?

Medicare Part D regulations could be a proverbial prescription for disaster if Texas lawmakers and regulators don't work to ensure that the new rules protect pharmacy reimbursement rates, access to needed medicine for enrollees and the state's pocketbook. The rules, all part of the Medicare Prescription Drug Improvement and Modernization Act of 2003, change who pays for drugs and what drugs patients are eligible to receive. It is scheduled to go into effect in January 2006. Many of the prescription drug benefits previously available to Medicaid patients will be switched to Medicare, affecting hundreds of thousands of Texans and dramatically changing how they receive their prescription drugs. In addition, implementation of the rules, and the fact that numerous questions remain about how the program will work, has left a huge learning curve for the patient, pharmacy, physicians and all those directly or indirectly affected by the Medicare change. That's why TrueCare Pharmacy's Texas Legislative Council decided to attempt and answer some of those questions and provide ideas and recommendations on how independent pharmacy can make this change as easy as possible for our clients and patients.

SPECIAL REPORT: MEDICARE PART D

TrueCare lobbyist and legislative team member Jorgen Schlemeier is one of those who warns about the potential impact of the changes and says pharmacists are key to making sure that the changes don't affect access to drugs for thousands of dual eligible beneficiaries across the country. In Texas alone, the changes could affect over 316,000 dual eligible Medicaid clients and more than 167,000 other clients who are not full dual eligible clients.

It's a refrain repeated by TrueCare Legislative Council Member Carlos Solis, who serves on the Medical Care Advisory Committee (MCAC) for the Texas Health and Human Services Commission. That's the committee that makes recommendations on the the state's Medicaid program and it is also considering the impact of the new federal rules on the state. "There could be a huge loss to the state on drug rebates," Solis said. "Plus there are numerous other unresolved issues such as automatic enrollments into the program, co-pays and how that will affect the number of scripts available to the most needy of our citizens."

The new program offers optional drug coverage to all Medicare beneficiaries; prescription coverage through private drug plans (PDPs) or Medicare HMOs (Medicare Advantage); limits benefits to the private plan's formulary; and changes Medicaid coverage for Medicare beneficiaries with Medicaid pharmacy coverage. "This permanently changes Medicaid," says Trey Berndt, of the state's Office of Health Services, which is charged with implementing the changes. "The state can no longer draw down money" on prescription related expenditures except those drugs not covered by Part D for which the state remains responsible.

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PRESCRIPTION FOR DISASTER (Cont. From Page 1)

No one seems to know to what extent the new rules will actually affect pharmacists, current Medicaid clients or the states that are being forced to implement the federal rules. At a recent meeting of the MCAC, several questions went unanswered during a presentation by Berndt to the committee. Schlemeier has seen the same kind of confusion across the country as states struggle to determine the impacts of the legislation. He says states should expect declining state coffers because manufacturers' rebate dollars are being lost and he noted that there are some states that are already questioning the constitutionality of mandatory clawback provisions in the legislation. The constitutional question was also mentioned in the MCAC meeting. Chairwoman Linda Ponder asked Berndt to work with Solis to try and determine what other states were doing to try and mitigate the losses the states will suffer because of the new rules. Meanwhile, Schlemeier said independent pharmacists must do everything possible to learn about the new rules and how it will affect their ability to do business. He was especially concerned about the ability of independents to participate with the private drug plans and receive fair reimbursement rates for their services. He noted that once dual eligible clients are enrolled in a PDP, the PDPs will set the formulary and reimbursement for participating pharmacies. He also mentioned that even if expenses go down in the Medicaid program, the state will still be losing revenue because of the loss of drug rebates in their programs. "We need to establish a system that, coupled with clawback, will offset savings no longer available from having to pay for this population's drug coverage," Schlemeier said. "If left alone, the dual eligibles which account for approximately 50 percent of the current Medicaid drug spend are going to be auto enrolled into various Medicare drug plans and we're not going to have any ability to effectively negotiate with any of those drug plans for a fair reimbursement plan that's anywhere close to what we get now. Pharmacy needs to work to obtain fair reimbursement rates so that we can continue to ensure that enrollees have access to the drugs they need and the state has an opportunity to mitigate their losses because of the loss of drug manufacturer rebates."

TIMELINE**MEDICARE PART D**

July 1 -- States begin providing assistance for subsidy application.

Sept. 14 -- CMS announces approved prescription drug plans (PDP) for Texas.

Oct. 1 -- Approved plans can begin marketing to patients.

Oct. 15 - Medicare disseminates information comparing Part D plans via mail and 1-800-Medicare. Deadline for Medicare to notify states of their annual per capita drug payment amounts for 2006.

Nov. 15 -- Enrollment period for Part D Plan selection opens (runs through May 15, 2006 in first year only.)

Dec. 31 -- Medicaid prescription drug coverage for dual eligibles ends. Medicare discount care program ends.

Jan. 1, 2006 -- Medicare Prescription Drug Benefit (Medicare Part D) begins.

*** Timeline provided by the Texas Health and Human Services Commission.**

**** All dates are 2005 unless otherwise noted.**

HOW MEDICARE PART D WORKS ...

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) moves the authority to pay for medication coverage from the states to the federal government for those eligible for both Medicare and Medicaid (dual eligibles). In January 2006 the new Medicare prescription medication benefit will replace Medicaid prescription coverage for low income beneficiaries. States will be most likely required to continue providing "wrap around" prescription medication benefits through Medicaid to compliment the new Medicare coverage. Clients will have a choice of purchasing a private Medicare prescription plan (PDP) or a Medicare Advantage Plan with qualified prescription drug coverage. Initial enrollment for the program begins in November and will continue for six months. Part D will be optional with an expected monthly premium of around \$35.

GOVERNOR VETOES \$440 MILLION FOR MEDICARE GIVE-BACK

Texas Gov. Rick Perry has vetoed \$440 million included in the state's budget that would be given to the federal government efficiencies expected from moving "dual eligible" Medicaid beneficiaries to Medicare prescription drug coverage. "We are not going to turn over savings we have achieved in Texas to be spent on Washington," Perry said. "This veto in no way jeopardizes the drug prescription benefits that Texans receive. In the interim I will be working with President Bush, Secretary Leavitt and other governors on Medicaid and Medicare reform that does not penalize states."

Several states' attorneys general have raised concerns that this give-back provision is an unconstitutional levy on state treasuries. Perry said he will ask Attorney General Greg Abbott to review the issue and join in efforts to clarify the issue.

CMS ADMINISTRATOR ASKS FOR HELP IN IMPLEMENTING MEDICARE PART D

Mark McClellan, the director for the Centers for Medicare & Medicaid Services (CMS) has sent a letter to numerous healthcare and pharmacy groups asking for help in getting out information on the Medicare prescription drug plan. McClellan said all Medicare beneficiaries - no matter how they get their health care today or whether they have existing drug coverage - will be eligible for drug coverage under the plan, which will cover both brand name and generic drugs. "We are committed to making sure that everyone who qualifies for that extra help gets it. Almost eight million people will automatically qualify for extra help. Beginning in late May through June, people with Medicare and Medicaid, people in a Medicare Savings Program, and those who receive Supplemental Security Income will receive a letter from Medicare telling them they will receive the extra help automatically so they do not have to apply," McClellan said. "The notices may be viewed at <http://www.cms.hhs.gov/medicarerereform/lir.asp>. If you or a loved one receives this letter please be assured that this means you or they will have continuous prescription drug coverage with small out of pocket costs."

Additionally, there is extra help for people who do not automatically qualify but who do have limited income and resources. The Social Security Administration (SSA) is working with CMS to help these people apply for this extra help and get pre-qualified for this assistance before the enrollment period for the prescription drug coverage plans begins in the Fall. Social Security will be mailing a letter and an application to almost 19 million people beginning in late May and the mailings will continue through August. We encourage everyone who receives this letter and application to fill out this application so they can get the extra help from Medicare to pay for their prescription drug coverage. This letter can viewed at <http://www.ssa.gov/organizations/medicareoutreach2/> on the web. Select "Application for Help with Medicare Prescription Drug Plan Costs."

WHERE TO GET UPDATED INFORMATION ON MEDICARE PART D ...

-- The CMS Pharmacy website (<http://www.cms.hhs.gov/medicarerereform/pharmacy>) provides important information for pharmacy on the new Medicare Prescription Drug Benefit. Created by pharmacists for pharmacists, some of the topics on the website include: Part B versus Part D drug coverage; formulary and transition information; medication therapy management issues; and much more. Special-practice pharmacies, including long-term care pharmacies, will find specific information on how Medicare Prescription Drug Coverage will impact their practices. Also, the Frequently Asked Questions (FAQs) section provides answers to commonly asked questions about Medicare Prescription Drug Coverage.

-- Sign up for emails from CMS about Medicare Prescription Drug Coverage by connecting to this link: <http://www.cms.hhs.gov/maillinglists/> You can sign up for the Pharmacy Medicare Modernization Act (MMA) listserv which is now live on the website. CMS will use the list to distribute Medicare Rx updates, as well as other timely notices. To sign up for the listserv titled Pharmacy_MMA-L. When you get to the initial mailing lists page, enter your name and email address, then scroll down to find Pharmacy_MMA-L. Click on the first radial button to subscribe. You will receive a confirmation e-mail instructing you to go to a website which will confirm your request to enter the listserv. You do not need to login and create a password at the NIH Listserv website.

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HOW PHARMACISTS CAN PREPARE FOR MEDICARE PART D COVERAGE

Here are a few ideas on how pharmacists can prepare for the changes in dual eligible prescription drug coverage.

NOW -- Determine who and where your current Medicare clients are, including who is full dual eligible, other dual eligible and Medicare only.

EARLY SUMMER -- Watch for more information and communications materials from HHSC, Medicare and other sources.

SEPT. - OCT. -- Learn about the new Medicare Part D Plans available. There will be stand-alone drug plans and Medicare HMOs. Review their formularies and contact information for patient coverage problems.

NOV. - DEC. AND ONGOING -- Check for Part D coverage for duals and Medicare only. Support Part D enrollment on an ongoing basis.

INTERESTING FACTS ABOUT MEDICARE PART D ...

-- There are no provisions in Medicare Part D to contain drug costs. In fact, the legislation prohibits Medicare from using its purchasing power to negotiate lower drug costs for beneficiaries.

-- Medicare will assign full dual eligibles to a Part D plan in October. Beneficiaries can pick a new plan but if they don't they will be automatically enrolled in a plan that may or may not meet all their medication needs.

TRUECARE PROVIDES MEDICARE PART D SEMINAR...

David W. Grauer, a attorney and pharmacist considered a national expert on the health care industry, will lead a Sunday afternoon seminar on the Medicare Prescription Drug Improvement and Modernization Act on Sunday, Aug. 7, as part of the TrueCare Pharmacy 18th Annual Conference. Grauer heads the Healthcare Practice Group for the international law firm of Squire, Sanders & Dempsey, L.L.P. He concentrates his practice on issues within the health care industry including mergers and acquisitions, joint ventures, managed care negotiations, Medicaid and Medicare reimbursement, fraud and abuse issues, confidentiality and privacy issues, and professional and business licensure matters. Mr. Grauer is also a pharmacist with seven years' experience in hospital management. He is a member of the National Health Lawyers Association and the Health Care Law Committee of the Ohio State Bar Association. He is listed in The Best Lawyers in America. The conference will be held Aug. 5-7 at the Hyatt Regency in Kansas City. For more information call 816-245-5702.

HOW TO CONTACT YOUR TRUECARE LEGISLATIVE TEAM

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