DEPARTMENT OF HEALTH & HUMAN SERVICES
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CENTER FOR MEDICARE

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TO: All Part D Sponsors

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SUBJECT: Medicare Coverage Gap Discount Program Beginning in 2011: Additional Guidance Concerning Part D Supplemental Benefits, Employer Group Waiver Plans, Platino Plans, and Subrogation Claims

This memorandum provides Part D sponsors with additional 2011 guidance specific to:

- Determining the applicable discount if the Part D sponsors is offering Part D Supplemental Benefits with fixed copays in the coverage gap;
- Establishing new Employer Group Waiver Plan requirements to submit attestations and to make benefit package information available for audit;
- Clarifying that the applicable discount is applied before additional Platino coverage is applied; and
- Coordinating benefits with other non-Part D payers that incorrectly paid primary to Medicare.

Part D Supplemental Benefits

CMS stated in the May 21, 2010 guidance that for 2011, any Part D plan that wishes to offer Part D supplemental benefits on applicable drugs covered between the plan's initial coverage limit (ICL) and the Medicare Part D catastrophic threshold using coinsurance will use the rules described as follows: Plan, manufacturer and beneficiary liabilities shall be determined at the claim level. The value of supplemental benefits that must be calculated first on any claim for an applicable drug will consist of the difference between the proposed supplemental coinsurance and coinsurance under the basic benefit (100% for 2011). Thus, for a brand drug supplemental benefit of 60% coinsurance, the value of the supplemental benefits that must be applied first (plan liability) would be 40% (100% - 60%) of the negotiated price of the drug. The amount of the discount would then be calculated as 50% of [the negotiated price (as defined in 42 CFR 423.100) less the supplemental benefit]. Beneficiary cost sharing will be the remainder of the negotiated price after the plan liability and discount amounts have been applied.

For 2011, we have determined that the same formula will be required for Part D plans offering fixed copay supplemental gap coverage. For example, if the negotiated price of the drug is $100 and the Part D plan's benefit has a copay of $60 prior to application of any discount, then the value of the supplemental benefit that must be applied first would be $40 ($100-$60). The amount of the discount would then be calculated as 50% of ($100- $40) or $30. In other words, the plan may offer an actuarial equivalent copay prior to the application of the coverage gap discount. To be clear, for 2011 Part D plan benefit packages may not incorporate the coverage gap discount into their benefit design and establish copays that apply after the discount amount. Thus, in the case of either a coinsurance or copay design, the amount the beneficiary pays at point-of-sale would generally be approximately 50% of their expected cost sharing under the plan's benefit package.

Using either coinsurance or copay designs, when supplemental benefits apply, the dispensing fee is to be included in the plan liability portion of the claim to the extent that such liability is equal to or greater than the dispensing fee.

Application of the Coverage Gap Discount to Part D Employer Group Waiver Plans (EGWPs)

As stated in the section above, the value of supplemental benefits provided under a Part D enhanced benefit plan must be calculated prior to the application of the Medicare manufacturer coverage gap discount. This requirement also applies to Part D benefits provided by sponsors of employer group health and waiver plans (EGWPs).

Since EGWP sponsors do not submit bids for their Part D EGWP benefit packages (because they are paid the national Part D bid amount), CMS does not require sponsors of EGWPs to submit Part D benefit information, including Part D supplemental (enhanced) benefit information. Absent the supplemental information collection, CMS cannot validate that the application of the coverage gap discount has been calculated correctly by the Part D sponsor. Therefore, beginning in 2011, a Part D sponsor of EGWPs will be required to attest, as part of its contract with CMS, that if the sponsor provides supplemental coverage via any of its enhanced benefit plans, it will apply the manufacturer coverage gap discount only after the plan's supplemental benefits have been applied. Sponsors will also attest to the accuracy of the discount amounts submitted on the prescription drug event (PDE) data and provide documentation, upon request, to CMS's third party administrator (TPA) when required. CMS will develop an audit approach and perform targeted audits of PDE data to ensure Part D sponsors have correctly applied the manufacturer discounts to EGWPs beginning in CY 2011.

We note that if EGWP benefits are restructured to provide commercial (non-Part D) wrap-around coverage that supplements a basic Part D benefit package, sponsors would be permitted to apply the manufacturer coverage gap discount **before** any coverage or financial assistance is provided by the other commercial payer (See §1860D-14A(c)(1)(A)(v) of the Act).

Platino Plans

As required by the 2010 Call Letter, Platino plans submit Part D bids that reflect only basic benefits, and do not include any supplemental benefits required by the Commonwealth of Puerto Rico. Supplemental coverage required by the Commonwealth is, therefore, considered "other health coverage". In accordance with §1860D-14A(c)(1)(A)(v), Part D sponsors offering Platino plans shall apply the applicable discount for applicable beneficiaries receiving applicable drugs before such other health coverage is applied. We also note that Platino plan enrollees are not entitled to an income-related subsidy under section 1860D-14 and, therefore, are not excluded from the definition of applicable beneficiary.

Applicability of the Coverage Gap Discount to Coordination of Benefits with Other Non-Part D Payers that Incorrectly Paid Primary to Medicare

The need for payer-to-payer coordination of benefits arises when other payers that are not Part D sponsors either pay, but should not have paid at all, or pay more than they should have because they paid out of the correct payer order. In these situations, Part D sponsors are required to work directly with these providers of other prescription drug coverage to accept subrogation of such claims and resolve these coordination of benefits issues. However, these claims are not eligible for the coverage gap discount because the beneficiary would be assumed not to have encountered a coverage gap on the original claim. It should also be noted that the majority of these situations involve Medicaid programs seeking payment for dual eligible beneficiaries who, by definition, are not applicable beneficiaries for purposes of the coverage gap discount. Thus, plan sponsors should apply discounts to eligible claims submitted by network pharmacies and by beneficiaries, but not to those submitted by other payers.