



## **CENTER FOR DRUG AND HEALTH PLAN CHOICE**

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### **MEMORANDUM**

**Date:** August 4, 2008

**To:** All Part D Sponsors

**Subject:** Best Available Evidence Policy – UPDATE

**From:** Cynthia Tudor, Ph.D., Director  
Medicare Drug Benefit and C & D Data Group

The purpose of this memorandum is to clarify and remind sponsors of the requirements associated with CMS’ “best available evidence” (BAE) policy and inform sponsors of a new process for assisting individuals who do not have one of the required pieces of evidence but who claim to be eligible for the low-income subsidy (LIS). Where there is a conflict between this memorandum and earlier BAE guidance, this memorandum supersedes earlier guidance, and is effective immediately.

As described in more detail below, in accordance with the statutory requirement to provide a cost-sharing subsidy to Part D eligible individuals who are full-benefit dual eligible individuals or recipients of supplemental security income (SSI), Part D sponsors must provide access to Part D drugs at the correct LIS cost-sharing level when presented with evidence of LIS eligibility, even if the sponsor’s systems and CMS’ systems do not yet reflect that eligibility. Sponsors also must update their own systems to reflect the LIS status indicated by the best available evidence and, if necessary, must submit a request to CMS so that, for the deemed population, the agency’s systems can be updated as well. These requirements apply to all beneficiaries who are “deemed” subsidy eligible (including full benefit Medicare/ Medicaid eligibles, partial dual eligibles, and people receiving SSI) as well as those who must apply and are awarded LIS by the Social Security Administration (SSA).

### **I. Mandatory Requirements for Accepting BAE**

Part D plan sponsors are required to:

- Accept any of the following forms of evidence to establish the subsidy status of a full benefit dual eligible beneficiary when provided by the beneficiary or the beneficiary’s pharmacist, advocate, representative, family member or other individual acting on behalf of the beneficiary:

1. A copy of the beneficiary's Medicaid card that includes the beneficiary's name and an eligibility date during a month after June of the previous calendar year;
  2. A copy of a state document that confirms active Medicaid status during a month after June of the previous calendar year;
  3. A print out from the State electronic enrollment file showing Medicaid status during a month after June of the previous calendar year;
  4. A screen print from the State's Medicaid systems showing Medicaid status during a month after June of the previous calendar year;
  5. Other documentation provided by the State showing Medicaid status during a month after June of the previous calendar year; or,
  6. For individuals who are not deemed eligible, but who apply and are found LIS eligible, a copy of the SSA award letter.
- Accept any one of the following forms of evidence from beneficiaries or pharmacists to establish that a beneficiary is institutionalized and qualifies for zero cost-sharing:
    1. A remittance from the facility showing Medicaid payment for a full calendar month for that individual during a month after June of the previous calendar year;
    2. A copy of a state document that confirms Medicaid payment on behalf of the individual to the facility for a full calendar month after June of the previous calendar year; or
    3. A screen print from the State's Medicaid systems showing that individual's institutional status based on at least a full calendar month stay for Medicaid payment purposes during a month after June of the previous calendar year.
  - As soon as one of the forms of BAE listed above is presented, provide the beneficiary access to covered Part D drugs at a reduced cost-sharing level which is no greater than the higher of the LIS cost-sharing levels for full subsidy eligibles (in 2008, this level was \$2.25 per generic or preferred brand name drug; \$5.60 per brand name drug), or at zero cost-sharing if the BAE also verifies the beneficiary's institutional status.
  - Update sponsor systems to reflect the correct LIS status, override standard cost-sharing, and maintain an exceptions process for the beneficiary to obviate the need to require the re-submission of documentation each month pending the correction of the beneficiary's LIS status in CMS systems. As described in the 2009 Call Letter issued on March 17, 2008, beginning in 2009, Part D sponsors will be required to update their systems within 48-72 hours of their receipt of BAE documentation. The requirement that Part D sponsors update their systems within 48-72 hours is in addition to the requirement that Part D sponsors provide access to covered Part D drugs as soon as BAE is presented to them.
  - Verify that CMS' systems do not already reflect the beneficiary's correct LIS status. If CMS' systems do not already reflect the updated information for

“deemed” beneficiaries, the sponsor must submit a request for correction in accordance with the procedures set forth in the June 27, 2007 memorandum. (Please note that, effective January 1, 2008, these requests for corrections now are to be sent to CMS’ contractor, IntegriGuard, instead of the CMS Regional Office contact.) A separate process is under development to permit plans to submit requests to update CMS’ systems for LIS applicants.

## **II. New Process for Assisting Individuals without BAE Documentation**

In addition to the requirements clarified above, CMS has established a new process for assisting individuals who claim to be subsidy eligible based on being full or partial dual eligibles but who cannot provide the documentation described above.

As part of this process, Part D sponsors are required to take the following actions:

1. Complete columns A through F of the new CMS BAE Assistance worksheet with plan and beneficiary information. A copy of this worksheet is attached to this memorandum.
2. Ask the beneficiary (or the beneficiary’s advocate, pharmacist, authorized representative or other individual acting on the beneficiary’s behalf) what date the beneficiary will run out of medication. If provided, include that information in the worksheet (Column G) and include the appropriate phrase in the subject line of the e-mail to the CMS Regional Office (CMS RO) as shown below:
  - a. If the beneficiary has less than 3 days of medication remaining, indicate the phrase “Immediate BAE Assistance Needed” in the subject line.
  - b. If the beneficiary has 3 or more days of medication remaining, indicate “Non-Immediate BAE Assistance Needed” in the subject line.
3. Send the worksheet via an encrypted e-mail to the CMS RO Part D mailbox based on where the individual resides. (See the list of CMS RO e-mail boxes and contacts in Attachment A.)
4. Absent unusual circumstances, submit the worksheet to the CMS RO within one business day of being notified that the beneficiary claims to be subsidy eligible but cannot provide the sponsor with one of the documents listed above. After recording the case in the CMS Complaints Tracking Module (CTM), the CMS RO will attempt to confirm with the State Medicaid agency whether the beneficiary is eligible for LIS, and will return the worksheet to the plan with the CMS portion (Columns H through Q) completed with any information received from the State.
5. Upon receipt of the worksheet from CMS, update the plan sponsor’s internal systems to reflect LIS status, as appropriate, and submit a request for correction to IntegriGuard in accordance with the procedures outlined in the June 27, 2007 memorandum cited above.

6. Notify the beneficiary of the results of CMS' inquiry as follows:
  - a. Sponsors must make an initial attempt to notify the beneficiary of the results of the CMS RO inquiry within one business day of receiving those results.
  - b. If a sponsor is unable to reach the beneficiary as a result of this initial attempt, it must attempt to notify the beneficiary until it succeeds or until it has attempted to do so a total of four times.
  - c. The fourth attempt, if necessary, shall be in writing, using one of two CMS Model Notices (see Attachments B and C). If CMS determines that the beneficiary is LIS eligible, use the "Determination of LIS Eligibility" Model Notice provided as Attachment B. If CMS determines that the beneficiary is not LIS eligible, or is unable to confirm the beneficiary's LIS status, use the "Determination of LIS Ineligibility" Model Notice provided as Attachment C. (Note: We have provided the appropriate marketing codes at the top of each model so that plans can send these notices under our "file and use" policy.)
  - d. If a request for a subsidy was made on the beneficiary's behalf by an advocate or authorized representative, it shall be sufficient for the sponsor to contact that advocate or representative. If, however, the only request made on the beneficiary's behalf was by a pharmacist, the sponsor must also contact the beneficiary directly. Beneficiaries must be notified that if they do not agree with the results of the inquiry, the sponsor will provide them with appropriate contact information for the appropriate CMS RO. (See Attachment A for primary and back-up contacts at each CMS RO.)
7. As soon as the sponsor receives confirmation from the CMS RO that a beneficiary is subsidy eligible, the sponsor must provide the beneficiary access to covered Part D drugs at a reduced cost-sharing level no greater than the higher of the LIS cost-sharing levels for full subsidy eligibles (in 2008, this level was \$2.25 per generic or preferred brand drug; \$5.60 per brand name drug), or at zero cost-sharing if the RO also verifies the beneficiary's institutional status.
8. Close out the case in the CTM in the new "Beneficiary Needs Assistance with Acquiring Medicaid Eligibility Information" category. The date entered must be the date of the plan sponsor's final attempt to notify the beneficiary of the results of CMS' inquiry, in accordance with the procedures described above.

### **III. BAE Policy Communication and Oversight**

Part D sponsors must develop appropriate member services and pharmacy help desk scripting to identify cases involving BAE and to allow callers either to submit BAE

pursuant to the requirements described in Section I or to request assistance pursuant to the requirements described in Section II.

Sponsors must also provide a link on their website to the section of CMS' website regarding BAE policy and make information about the BAE policy readily available for those who contact the plan's call center. The website address is:  
[www.cms.hhs.gov/PrescriptionDrugCovContra/17\\_Best\\_Available\\_Evidence\\_Policy.asp](http://www.cms.hhs.gov/PrescriptionDrugCovContra/17_Best_Available_Evidence_Policy.asp)

Given the importance of this policy to low-income beneficiaries, CMS has also established a separate complaint tracking category for "best available evidence" issues and will be closely monitoring Part D sponsor compliance with this policy.

For questions concerning the best available data policy, please contact Deborah Larwood at 410-786-9500.

## Attachment A –CMS RO Contacts

<b>CMS Region</b>	<b>Request Mailbox</b>	<b>Primary Contacts</b>	<b>Back-up Contacts</b>
1 Boston	<a href="mailto:PartDComplaints_RO1@cms.hhs.gov">PartDComplaints_RO1@cms.hhs.gov</a>	Estella Ramirez Estella.Ramirez@cms.hhs.gov 617-565-1219	Arlene DiSalvo Arlene.DiSalvo@cms.hhs.gov 617-565-1269
2 New York	<a href="mailto:PartDComplaints_RO2@cms.hhs.gov">PartDComplaints_RO2@cms.hhs.gov</a>	Linda Sheo Linda.Sheo@cms.hhs.gov 212-616-2349	Debra Smith Debra.Smith@cms.hhs.gov 212-616-2351
3 Philadelphia	<a href="mailto:PartDComplaints_RO3@cms.hhs.gov">PartDComplaints_RO3@cms.hhs.gov</a>	Tamara McCloy Tamara.McCloy@cms.hhs.gov 215-861-4220	Robin Santana Robin.Santana@cms.hhs.gov 215-861-4229
4 Atlanta	<a href="mailto:PartDComplaints_RO4@cms.hhs.gov">PartDComplaints_RO4@cms.hhs.gov</a>	Sandra Staiano Sandra.Staiano@cms.hhs.gov 404-562-7420	Emily Flanagan Emily.Flanagan@cms.hhs.gov 404-562-1739
5 Chicago	<a href="mailto:PartDComplaints_RO5@cms.hhs.gov">PartDComplaints_RO5@cms.hhs.gov</a>	Peter Bandemer Peter.Bandemer@cms.hhs.gov 312-886-2569	Natosha Lee Natosha.Lee@cms.hhs.gov 312-353-1448
6 Dallas	<a href="mailto:PartDComplaints_RO6@cms.hhs.gov">PartDComplaints_RO6@cms.hhs.gov</a>	Wanda Blakely Wanda.Blakely@cms.hhs.gov 214-767-4411	Rose Marie Thoreson RoseMarie.Thoreson@cms.hhs.gov 214-767-6401
7 Kansas City	<a href="mailto:PartDComplaints_RO7@cms.hhs.gov">PartDComplaints_RO7@cms.hhs.gov</a>	Catherine Rippey Catherine.Rippey@cms.hhs.gov 816-426-6391	David Tritle David.Tritle@cms.hhs.gov 816-426-6414
8 Denver	<a href="mailto:PartDComplaints_RO8@cms.hhs.gov">PartDComplaints_RO8@cms.hhs.gov</a>	Lisa Gaglia-Bleyle 303-844-7168 Lisa.Gaglia-Bleyle@cms.hhs.gov	Adrienne Carter 303-844-5810 Adrienne.Carter@cms.hhs.gov
9 San Francisco	<a href="mailto:PartDComplaints_RO9@cms.hhs.gov">PartDComplaints_RO9@cms.hhs.gov</a>	Marie Fong Marie.Fong@cms.hhs.gov 415-744-3653	John Muglia John.Muglia@cms.hhs.gov 415-744-3593
10 Seattle	<a href="mailto:PartDComplaints_RO10@cms.hhs.gov">PartDComplaints_RO10@cms.hhs.gov</a>	Bradley Thuston Bradley.Thuston@cms.hhs.gov 206-615-2427	Catherine Wu Catherine.Wu@cms.hhs.gov 206-615-2355

**Attachment B – CMS Model Notice “Determination of LIS Eligibility”**

*Plans should submit this notice as File & Use in HPMS under category 7000-Special Materials, code 7003-CMS Mandated Notices*

[Member#-if member # is SSN, only use last 4 digits]

[RxID]

[RxGroup]

[RxBin]

[RxPCN]

<Date>

Dear <Name of Member>:

On <Date>, you asked <Plan name> for help showing you qualify for extra help with your Medicare prescription drug costs. Medicare contacted your State Medicaid Agency and confirmed that **you do qualify for extra help**.

Since you qualify for extra help, your Medicare prescription drug costs will be reduced. You will get more information from us shortly on the specific amounts you will pay for your premiums and prescriptions in our plan.

If you have any questions, please call our Member Services at <phone number><days and hours of operation>. TTY users should call <TTY number>.

<Material ID>

**Attachment C – CMS Model Notice “Determination of LIS Ineligibility”**

*Plans should submit this notice as File & Use in HPMS under category 7000-Special Materials, code 7003-CMS Mandated Notices*

[Member#-if member # is SSN, only use last 4 digits]

[RxID]

[RxGroup]

[RxBin]

[RxPCN]

<Date>

Dear <Name of Member>:

On <Date>, you asked <Plan name> for help showing that you qualify for extra help with your Medicare prescription drug costs.

Medicare contacted your State Medicaid Agency and <insert either “confirmed that **you do not automatically qualify for extra help**” or “**has not been able to confirm that you automatically qualify for extra help**”>.

<If Medicare confirmed that the individual is not automatically eligible for LIS, insert the following paragraph:

“You may still qualify for extra help, but you must apply to find out. If you haven’t already filled out an application for extra help, you can get an application or apply over the phone by calling Social Security at 1-800-772-1213, or apply online at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the web. TTY users should call 1-800-325-0778. If you have any questions, please call our Member Services at <phone number><days and hours of operation>. TTY users should call <TTY number>.”>

If you have any questions or you believe this information is wrong, please call <Regional Contact> at <phone number> in the regional office of the Centers for Medicare and Medicaid Services.

<Material ID>