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MEMORANDUM

DATE: July 23, 2007

TO: All Prescription Drug Plan Sponsors (PDP) and Medicare Advantage (MA)
Organizations Offering Employer/Union-Only Group Waiver Plans (EGWPs)

FROM: Brenda J. Tranchida
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Employer Policy and Operations Group

SUBJECT: Employer Group Waiver Policy – Clarifying the Low-Income Premium Subsidy Pass
Through Requirements and Affording Part D Sponsors the Ability to Refund These
Amounts To Enrollees

This memorandum clarifies the employer group waiver policy regarding pass through of low-income premium subsidy amounts and also provides that in certain circumstances Part D sponsors may refund these amounts directly to beneficiaries enrolled in these employer/union-only group waiver plans (EGWPs) (i.e., “800 series” plans) as set forth below.

Clarification on Low-Income Premium Subsidy Pass Through Requirements

EGWP Part D sponsors are required to comply with the same requirements related to the low-income premium subsidy amount that apply to Part D sponsors offering Part D plans to individual beneficiaries. See 42 CFR 423.800(b), Additional Part D Waiver Guidance For Employer/Union Retiree Coverage, April 6, 2005 and HPMS – Availability of Low-Income Premium Subsidy Amounts Paid to Part D Sponsors, December 8, 2006. Thus, EGWP Part D sponsors are responsible for identifying the low-income (LIS) eligible members for each employer/union sponsor and passing through the low-income premium subsidy amount payments made by CMS on behalf of these identified beneficiaries to reduce their premium contributions.

Premiums charged (to the beneficiary and/or the employer) for a particular “800 series” PDP or MA-PD plan benefit package can vary from employer group to employer group and also among a particular employer group’s enrollees based on legitimate criteria such as years of service. CMS does not take into account variations in premiums either in the MA or Part D benefit because CMS does not receive information on these variations during the annual MA and Part D bidding process. Even though premium amounts may vary among and between employer group plan enrollees, the LIS premium subsidy amounts paid by CMS to the Part D sponsor for all enrollees of a particular “800 series” plan benefit package do not vary. Additionally, even though sponsors of “800 series” MA-PD plans can use their Part A/B rebates to reduce or eliminate the basic Part D premium and/or Part D supplemental premium CMS does not receive

information on how these rebates are applied to reduce premiums for particular employer groups during the bidding process.

As a condition of receiving the Part D EGWP-specific Part D bidding and premium modifications described above, CMS requires that all Part D sponsors of EGWP plans ensure that any low-income premium subsidy amount paid on behalf of a LIS beneficiary accrues first to the benefit of the LIS employer group beneficiary. Specifically, any monthly low-income premium subsidy amount paid to the Part D sponsor on behalf of an employer group LIS beneficiary must first be used to reduce any portion of the monthly PDP or MA-PD premium paid for by the beneficiary. Any remainder then may be used to reduce any portion of the employer's PDP or MA-PD premium contribution. These rules apply regardless of whether the sponsor of an MA-PD plan has used rebates to reduce the Part D basic or supplemental premium for a particular employer.

However, if the beneficiary's and the employer's total monthly combined premiums are less than the monthly low-income premium subsidy amount, any portion of the low-income subsidy premium amount above the total monthly premium must be returned directly to CMS. Similarly, if there is no monthly premium charged the beneficiary or employer, the entire low-income subsidy premium amount must be returned directly to CMS and cannot be retained by the Part D sponsor or the employer.

Ability to Refund Low-Income Subsidy Premium Amounts

In accordance with 42 CFR 423.800, where the Part D EGWP sponsor directly bills beneficiaries for their premium contributions, the Part D sponsor is required to reduce up-front the premiums charged low-income subsidy beneficiaries to reflect the low-income premium subsidy payments paid to the sponsor by CMS on behalf of these individuals.

If, however, the Part D sponsor does not or cannot directly bill an employer group's beneficiaries, CMS will waive this up-front reduction requirement and permit the Part D sponsor to directly refund the amount of the low-income premium subsidy to the LIS beneficiary. This refund must meet the above requirements concerning beneficiary premium contributions; specifically, that the amount of the refund not exceed the amount of the monthly premium contribution by the enrollee and/or the employer. In addition, the sponsor must refund these amounts to the beneficiary within a reasonable time period. However, under no circumstances may this time period exceed forty five (45) days from the date that the Part D sponsor receives the low-income premium subsidy amount payment for that beneficiary from CMS.

Alternatively, the Part D sponsor and the employer may agree that the employer will be responsible for reducing up-front the premium contribution by LIS beneficiaries. In those instances where the employer is not able to reduce up-front the premiums paid by these beneficiaries, the Part D sponsor and the employer may agree that the employer shall directly refund to the LIS beneficiaries the amount of the low-income premium subsidy up to the monthly premium contribution previously collected from the enrollee. The employer is required to complete the refund on behalf of the Part D sponsor within forty-five (45) days of the date the Part D sponsor receives the low-income premium subsidy amount payment for that beneficiary from CMS.

In some cases the LIS beneficiary may not be the subscriber to or participant in an employer plan, but the spouse or dependent of the subscriber/participant. In these instances, where the Part D sponsor or employer refunds low-income premium subsidy amounts to LIS enrollees, it may refund such amounts directly to the employer group plan subscriber/participant on behalf of a spouse or dependent who is an LIS beneficiary.

As a condition of receiving the EGWP-specific Part D bidding and premium modifications described here, CMS requires all sponsors of an EGWP “800 series” plan to ensure that the Part D sponsor enters into a written agreement with an employer which requires the employer to comply with the above requirements, including the requirement that any low-income premium subsidy amount paid to the employer sponsor on behalf a LIS beneficiary is first used to reduce any portion of the monthly PDP or MA-PD premium paid for by the beneficiary. CMS’ waiver of certain Part D bidding and premium rules is contingent on the Part D sponsor’s compliance with this requirement and Part D sponsors may be asked to make available these written agreements for inspection or audit by CMS (or its designee). If the employer assumes responsibility for either reducing up-front LIS beneficiaries’ monthly premiums or refunding to LIS beneficiaries their monthly premium contributions, the Part D sponsor shall ensure that its written agreement with the employer reflects the employer’s assumption of these duties consistent with the above requirements (including a provision requiring that any refunds to a LIS beneficiary be completed within forty-five (45) days of the date the Part D sponsor receives the low-income premium subsidy amount payment for that beneficiary from CMS).

If there are any questions about this policy, please contact Brenda Tranchida, Director, Employer Policy and Operations Group, via phone (410-786-2001) or via email at Brenda.Tranchida@cms.hhs.gov.