



Center for Medicaid and CHIP Services

CMCS Informational Bulletin

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Center for Medicaid, CHIP and Survey and & Certification (CMCS)

SUBJECT: Implementation of Section 3309 of the Affordable Care Act

This Informational Bulletin provides information that we hope will be helpful to States as they work with CMS to implement section 3309 of the Affordable Care Act which eliminates Part D cost-sharing for full benefit dual eligible individuals receiving home and community-based services. The effective date for Section 3309 is January 1, 2012.

Background

Section 3309 of the Affordable Care Act amends section 1860D-14 (a)(1)(D)(i) of the Social Security Act (the Act) to extend elimination of Medicare Part D cost-sharing to full benefit dual eligible individuals who would be institutionalized if they were not receiving services under a home and community-based waiver authorized by a State under section 1115, or subsections (c) or (d) of section 1915, or under a State plan amendment under section 1915(i), or if such services are provided through enrollment in a Medicaid managed care organization with a contract under section 1903(m) or under section 1932.

New State Data

In order to implement section 3309 of the Affordable Care Act, CMS needs data from States identifying full benefit dual eligible individuals who are receiving home and community-based services (HCBS) through one of the authorities listed in section 3309. States are to report these data through an additional value in the Institutional Indicator field of the Medicare Modernization Act (MMA) file report. The new value will be “H” for HCBS. This new code now appears in the MMA File Specifications and Data Dictionary. Beginning no later than January 1, 2012, States must identify their full dual beneficiaries who are receiving HCBS and code these individuals “H” for HCBS in the Institutional Indicator field of the MMA file report.

Process for Beneficiaries to Correct HCBS Status

In situations when CMS data systems do not reflect State data verifying HCBS status, individuals may provide certain State documents to verify their status as a full dual beneficiary receiving HCBS. These documents would constitute Best Available Evidence (BAE), that is,

proof that the full dual beneficiary is receiving HCBS. The individual would present the BAE document to their Part D plan sponsor, and the plan sponsor must forward the document to CMS' agent for a correction of CMS data. Plan sponsors will also be required to correct these individuals' cost sharing levels in their own data systems, assigning copayment level 3 (\$0) to a full dual individual receiving HCBS. Below is a list of the types of State documents that Part D plan sponsors should accept as Best Available Evidence for receipt of HCBS. Please note that CMS is not requesting States to create new documents to verify receipt of Home and Community-Based Services. CMS expects plan sponsors to use existing State notices for the BAE process.

One of the following forms of evidence from beneficiaries or pharmacists should be accepted as proof that a full dual beneficiary is receiving HCBS and qualifies for zero cost-sharing:

- a) A copy of a State-issued Notice of Action, Notice of Determination, or Notice of Enrollment that includes the beneficiary's name and HCBS eligibility date during a month after June of the previous calendar year;
- b) A copy of a State-approved HCBS Service Plan that includes the beneficiary's name and effective date beginning during a month after June of the previous calendar year;
- c) A copy of a State-issued prior authorization approval letter for HCBS that includes the beneficiary's name and effective date beginning during a month after June of the previous calendar year;
- d) Other documentation provided by the State showing HCBS eligibility status during a month after June of the previous calendar year;
- e) A copy of a State-issued document confirming Medicaid payment for dates of HCBS service on or after January 1, 2012, such as Remittance Advice, including the beneficiary's name and dates of HCBS.

For any other State-issued document to be acceptable as BAE the minimum data elements are:

- a) Beneficiary's name;
- b) HCBS eligibility date.

For further information or clarification on this Informational Bulletin letter, please contact Katherine Pokrzywa at 410-786-5530, or katherine.pokrzywa@cms.hhs.gov.