



DATE: January 29, 2020

TO: All Prescription Drug Plan Sponsors, Medicare Advantage-Prescription Drug Plan Sponsors, and Medicare-Medicaid Plans serving California between January 1, 2012 and Present

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SUBJECT: Part D Low-Income Subsidy Copayment Corrections for Beneficiaries Receiving Home- and Community-Based Services in California

Full-benefit dual eligible individuals receiving home- and community-based services (HCBS) under specified Medicaid authorities should have zero dollar cost sharing for Part D covered prescriptions (see 42 CFR 423.782(a)(2)(ii)). CMS uses data sent by states to establish the correct Part D cost-sharing levels for dually eligible individuals. The California Department of Health Care Services (DHCS), which administers the state Medicaid program (called “Medi-Cal”), has identified approximately 30,000 full-benefit dually eligible Medicare beneficiaries enrolled in Medicare prescription drug plans between January 2012 and January 2020 for whom the DHCS had not sent CMS data indicating these individuals receive qualifying HCBS.¹

As a result of these data omissions, beneficiaries may have been charged cost sharing by their Medicare drug plans (i.e., Prescription Drug Plans (PDPs), Medicare Advantage-Prescription Drug Plans (MA-PDs), and Medicare-Medicaid Plans (MMPs)).

¹ Please note: California DHCS had sent data correctly identifying these individuals as receiving full Medicaid, so CMS would have deemed them eligible for the full LIS subsidy, with significantly reduced copayments.

The California DHCS will provide corrections to CMS in three phases. The first phase will include corrections for contract years 2017,² 2018, and 2019. Medicare drug plans should expect to see the corrections on their MARx Daily Transaction Reply Report (DTRR) by the end of January or early February 2020. Please note this may include current as well as former enrollees. Plans can query the CMS MARx system for updated address information via the Batch Eligibility Query (BEQ) or MARx User Interface (UI). While the focus of this first phase is retroactive corrections, individuals with HCBS status from July 2019 through December, 2019 will be deemed for zero dollar cost sharing through December 2020. (See 42 CFR 423.782(a)(2)(ii))

In the second phase, expected as early as March 2020, California DHCS will implement needed systems changes to send more accurate HCBS data on current enrollees on its standard monthly file to CMS. In the third phase California DHCS will send corrections for remaining months in the past, back to January 2012. CMS is working to make needed systems modifications to accept those older data and will separately notify affected Medicare drug plans when they will see the corrections on their DTRR.

Background on Medicare Prescription Drug Coverage for those Receiving Medicaid HCBS

The Medicare Modernization Act of 2003 provided that full-benefit dual eligible beneficiaries who are institutionalized would not have any Part D cost sharing. Section 3309 of the Affordable Care Act extended the elimination of Part D cost sharing to full-benefit dual eligible individuals who would be institutionalized if they were not receiving HCBS through one of the authorities listed in section 3309.³

Expectations of Prescription Drug Plans

CMS expects plans will follow current timelines for acting on LIS copayment level changes transmitted on these DTRRs, based on the date of receiving the notification from CMS, including:

- Issuing revised model Low-Income Subsidy Rider (LIS Rider; see Attachment 1) within 30 calendar days to affected beneficiaries (*Medicare Prescription Drug Benefit Manual Chapter 13 - Premium and Cost-Sharing Subsidies for Low-Income Individuals* (Rev. 14, 10-01-18),
- Paying beneficiary refunds within 45 days of receipt of correction on the DTRR (see 42 CFR 423.4669(a) Timeframes for coordination of benefits and claims adjustments), with model cover letter (see Attachment 2), and
- Resubmitting PDEs with corrected copayment levels within 90 calendar days (see HPMS memo dated October 6, 2011, *Revision to Previous Guidance Titled "Timely Submission of Prescription Drug Event (PDE) Records and Resolution of Rejected PDEs"*).

² At this time, CMS systems can only accept changes 36 months in the past, so the first phase will likely only go back as far as February 2017.

³ These include HCBS under a section 1115 demonstration, under a 1915(c) or (d) waiver, under a state plan amendment under 1915(i), or through a Medicaid managed care organization with a contract under section 1903(m) or under section 1932 of the Social Security Act.

Plan sponsors should ensure they meet requirements to accept and then show the correct zero dollar cost sharing for HCBS status in their systems when they relied on Best Available Evidence per 42 CFR 432.800(d) (*Medicare Prescription Drug Benefit Manual Chapter 13 - Premium and Cost-Sharing Subsidies for Low-Income Individuals* (Rev. 14, 10-01-18), section 70.5.2).

Finally, we remind plan sponsors that because a decision on the amount of cost sharing for a drug is considered a coverage determination by 42 CFR 423.566(b)(5), enrollees have the right to appeal if they dispute the cost-sharing amount or copayments (see also 42 CFR 423.580 for enrollees right to dispute copayments). Additionally, enrollees have the right to request a redetermination of a coverage determination per 42 CFR 423.580.

Ensuring Customer Service Representatives are Prepared to Support Dually Eligible Enrollees

We recommend that plans equip customer service representatives with call center scripts and resources to support current and former enrollees who are affected by this correction. CMS and California DHCS will likewise share information with organizations to whom beneficiaries may turn for support, including 1-800-MEDICARE and HICAP (the California SHIP).

Conclusion

We appreciate Part D sponsors' prompt attention to these issues, including effectuating needed communications with and refunds to affected current and former enrollees.

If you have any questions, please contact your Account Manager.

Attachment 1 - Revised Model LIS Rider for Corrections for Certain California Enrollees with HCBS

Attachment 2 - Model Cover Letter for Refund

Attachment 1 – Revised Model LIS Rider for Corrections for
Certain California Enrollees with HCBS

[Legend for Model LIS Rider:

- *Variable Placeholders are located within < >.*
- *Language that a sponsor may include or remove in its entirety, based on benefit design, is located within [].*
- *Language in italics is instructions to sponsors.*
- *SNPs that provide prescription drug benefits exclusively to people dually eligible for Medicare and Medicaid and do not charge any cost sharing in excess of the LIS cost-sharing levels must reflect their plan amounts in the LIS Rider.*

In all instances throughout this document in which dollar or percentage values appear (for instance, deductibles or copays), sponsors must provide the one (not multiple) value that applies to the enrollee who will receive this copy of the LIS Rider.]

Effective Date: *[Insert Date as Month Day, Calendar Year or Date Range]*

Evidence of Coverage Rider
for People Who Get Extra Help Paying for Prescription Drugs
(also called a Low-Income Subsidy Rider or LIS Rider)

[OPTIONAL: Sponsors may insert member's Rx BIN/PCN]

Keep this notice - it is part of <Plan Name>'s Evidence of Coverage <MMPs: use Member Handbook>.

We have new information that shows that you qualify for extra help paying for your prescription drug coverage. This means that you will get help paying your monthly premium, yearly deductible, and prescription drug cost sharing. Your prescription drug coverage will not change.

See the chart below for a description of your prescription drug coverage:

Your monthly plan premium is	Your yearly deductible is	Your cost-sharing amount for generic/preferred multi-source drugs is no more than	Your cost-sharing amount for all other drugs is no more than
<Insert applicable amount>*	\$0	\$0	\$0

[Sponsors: Insert this statement for affected LIS members: Changes to your prescription drug costs began as of <effective date at the top of this letter>. If you have filled prescriptions since this date, you may have been charged more than you should have paid as a member of our plan.

If we owe you money, we will send you a separate letter later to let you know how much and include the refund. You may get similar letters from other prescription drug plans you were enrolled in in the past. **Refunds you get will not have any impact on your Medi-Cal eligibility, and you do not need to report the amount to your Medi-Cal caseworker.**]

If you disagree with our decision on the amount of the refund, you can make an appeal. You can make your appeal by sending a written request to us at <address>. *[If applicable, add: You may also call us at <insert Toll-free number> to submit an appeal by phone.]*

Medicare or Social Security will periodically review your eligibility to make sure that you still qualify for extra help with your Medicare prescription drug plan costs. Your eligibility for extra help might change if there is a change in your income or resources, if you get married or become single, or if you lose Medicaid.

If you have any questions about this notice, contact *[optional <us>]* <Plan Name>, *[optional <Member Services>]* at <Toll-free Number>, <Toll-free TTY Number>, <Days/Hours of Operation>, or at <web address>.

If you have general questions, you can also contact 1-800-MEDICARE (1-800-633-4227; TTY: 1-877-486-2048) or HICAP at 1-800-434-0222.

[Insert appropriate language, including disclaimers as outlined in Appendix 2 of the Medicare Communications and Marketing Guidelines or State-specific MMP Marketing Guidance.]

[Plans are subject to the notice requirements under Section 1557 of the Affordable Care Act. For more information, refer to <https://www.hhs.gov/civil-rights/for-individuals/section-1557>.]

You can also get this notice for free in other languages and formats, like large print, braille, or audio. Call *[insert Member Services toll-free phone and TTY numbers and days and hours of operation]*. The call is free.

Attachment 2 – Model Cover Letter for Refund

<date>

<member name>

<address 1>

<city, state zip>

[Plan Name] Medicare Plan Refund of Copays

Dear <name>,

[*Sponsors: In first sentence populate dates for which refund is being provided: You <were> <have been> enrolled in <Plan Name> from <Date 1> through <Date 2>.*] We recently learned that the government had inaccurate information that caused you to be charged and pay copays in error for Part D covered drugs while enrolled in our plan. As a result, we owe you <refund total>. To figure out how much we owed you, we looked at our records and added all the copayments we charged you in error during this period. This error has been fixed for these dates, and we have included a refund for the total amount. **This refund will not have any impact on your Medi-Cal eligibility, and you do not need to report the amount to your Medi-Cal caseworker.**

You may get similar letters with refunds from other prescription drug plans you were enrolled in in the past.

If you disagree with our decision on the amount of this refund, you can make an appeal. You can make your appeal by sending a written request to us at <address>. [*If applicable, add: You may also call us at <insert toll-free number> to make an appeal by phone.*]

We are sorry for any problems this may have caused. We are happy to answer any of your questions and make sure you don't have any problems as a result of this error. Please contact <Plan Name> at Member Services by phone at <toll-free telephone number (toll-free TTY telephone number), call center hours/days> with your questions. When you call, tell Member Services that you are calling about "Medicare Plan Refund of Copays."

If you have general questions about why you are getting this refund, you can also contact 1-800-MEDICARE (1-800-633-4227; TTY: 1-877-486-2048) or HICAP at 1-800-434-0222.

Thank you for your patience and understanding.

Sincerely,

<Signature>

<Name>
President, <Plan Name>

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