

PROGRAM MEMORANDUM INSURANCE COMMISSIONERS INSURANCE ISSUERS

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Title: Medigap Bulletin Series – INFORMATION

Subject: Medigap Coverage of Prescription Drugs or Biologicals Under a Replacement Drug Demonstration Authorized by Section 641(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

Market: Medigap

I. Purpose

This bulletin addresses the situation in which a beneficiary who is covered under any type of Medigap policy participates in a demonstration project authorized by the Secretary of the Department of Health and Human Services (Secretary) under section 641(a) of the MMA that will allow certain self-administered drugs that are not currently covered under Part B to be covered for demonstration participants. The bulletin clarifies that Medigap insurers are not required to cover any cost sharing for replacement drugs and biologicals for which their policyholders are responsible under this demonstration project, which is also referred to as the “replacement drug demonstration.”

II. Background

The Section 641(a) Demonstration

The MMA creates a new Medicare prescription drug benefit, codified as Part D of title XVIII of the Social Security Act. Section 641(a) of the MMA authorizes the Secretary to conduct a demonstration project under Medicare Part B to pay for prescription drugs or biologicals that are prescribed as replacements for drugs and biologicals otherwise covered under Part B. The statute directs that the demonstration must provide for beneficiary cost-sharing “in the same manner” as cost-sharing will apply to covered drugs obtained by individuals who enroll in standard prescription drug coverage after Medicare Part D goes into effect on January 1, 2006.

The replacement drug demonstration was to begin within 90 days of the enactment of MMA, and will conclude no later than December 31, 2005. An evaluation report prepared by the Secretary is to be submitted to Congress by July 1, 2006.

Beneficiary Cost-Sharing Responsibilities under Part D

A beneficiary who enrolls in standard prescription drug coverage under Medicare Part D in 2006 generally will be responsible for a \$250 deductible, 25 percent coinsurance for covered drugs up to the initial coverage limit of \$2250, the full cost of covered drugs until the beneficiary has incurred a total of \$3600 in out-of-pocket costs, and, for drugs purchased thereafter, the greater of (a) a co-payment of \$2 for a generic drug or preferred drug that is a multiple source drug or \$5 for other

drugs, or (b) 5 percent coinsurance. (The period during which the beneficiary is liable for 100% of prescription drug costs is commonly referred to as the “donut hole.”) Low-income beneficiaries will be subject to lower cost-sharing depending on their income and resources.

General Medigap Payment Rule Applicable to Demonstrations

CMS has consistently taken the position that when Part B coverage is extended to otherwise noncovered items or services by virtue of a demonstration project, expenses related to those items or services are treated as Part B covered services. Accordingly, since all Medigap policies must pay “the coinsurance” for Part B covered services, costs incurred under the demonstration for those services must be covered.

III. Issues

Medigap issuers have asked whether they would be required to pay any part of the cost-sharing amounts required under this demonstration, since it is being conducted under Part B.

IV. Discussion and Conclusion

In contrast to previous demonstrations under Medicare Part B, for which, in general, the statute simply authorized additional items and services to be covered under Part B, Congress explicitly addresses, and specifically changes, the cost-sharing rules that are to apply under the replacement drug demonstration. We have concluded that Congress intended for beneficiaries to be subject to the same cost sharing for drugs covered under the replacement drug demonstration as they will be subject to under Part D, rather than otherwise applicable Part B cost-sharing.

Medigap insurers are, and will continue to be, obligated to pay specified cost-sharing amounts under Medicare Part A and B, including cost-sharing amounts incurred under demonstration projects. However, they will not be required, or permitted, to pay for beneficiaries’ cost sharing under Part D. Due to the explicit statutory language governing the cost-sharing under this demonstration, we believe that Congress intended for beneficiaries’ cost-sharing obligation to mirror what it would be if Part D were already in effect. Similarly, we believe that Medigap insurers’ obligations should mirror the responsibilities that they will have (or in this case, will not have) with respect to coverage under Part D. Therefore, it is our position that Medigap insurers are not required to cover the policyholders’ cost-sharing responsibility for drug and biologicals under the replacement drug demonstration.

Where to get more information:

If you have any questions regarding this bulletin, contact the Private Health Insurance Group, the Centers for Medicare & Medicaid Services via e-mail at phigmedigap@cms.hhs.gov or by telephone toll-free at 1-877-267-2323, Ext. 6-1565.

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