

BACKGROUND AND HISTORY OF THE DISPUTE RESOLUTION PROGRAM

The Medicaid Drug Rebate Program, enacted into law in 1990, brought with it both rewards and challenges. For states and the Federal government it brought the reward of rebates on drugs purchased on behalf of Medicaid beneficiaries. For manufacturers, it brought the reward of additional Medicaid coverage of their drugs. For Medicaid beneficiaries, it brought greater access to needed prescribed drugs.

As for the challenges, the Centers for Medicare and Medicaid Services (CMS) identified a need for a process to assist manufacturers and states in resolving drug rebate disputes. CMS made the decision in 1994 to develop a voluntary process for resolving disputes. As part of developing this process, CMS staff received assistance and alternative dispute resolution training by the HHS Departmental Appeals Board (DAB). In addition, in 1995 CMS selected the Boston Regional Office (RO) as a pilot site for developing a process that facilitates goodwill, cooperation, timely resolution, and closure of drug rebate resolution. Buy-in was sought and obtained from manufacturers and states. Staff from the Boston RO, CMS and the HHS/DAB met to discuss an alternative process CMS could facilitate to resolve disputes between drug manufacturers and states. The Boston RO hosted a six state meeting with CMS CO staff to discuss dispute resolution strategies. With over 500 participating manufacturers nationwide, the Region I states agreed to commit resources to target dispute resolution for their top ten manufacturers identified in terms of total reported dollars in dispute. The states were pleased that CMS would facilitate these meetings and asked for CMS to send a letter to manufacturers introducing their pilot project.

The Boston RO and CMS CO targeted the top ten manufacturers that the Region I states reported with the highest dollars in dispute. The introductory DRP letter that was sent to manufacturers was well received and most manufacturers responded to CMS's request to participate in the pilot. The forum for each meeting included all six Region I states, CMS representatives, and one manufacturer. CMS staff facilitated the discussions and the Region I states and the manufacturer demonstrated their commitment to work toward resolution. Region I and CMS CO also conducted several follow up meetings at the states' request and several follow up calls to states at the manufacturers' request. The pilot project affirmed the need for CMS to devote more resources to this program area. Based on the success of the Region I/CO joint pilot experience, CMS CO has expanded the DRP nationwide to expand to other regions the model of bringing states and manufacturers together, with CMS serving as the facilitator.

States and manufacturers have described the DRP as a mutually beneficial and cost saving process. In addition, the United States Department of Health and Human Services has cited the DRP as one of the Federal government's most successful program applications of alternative dispute resolution and a model for other agencies to emulate. The DRP was selected by the John F. Kennedy School of Government as a national winner of the prestigious Ford Foundation Innovations in Government Award.