



Center for Medicaid and State Operations

SMDL #05-002

June 3, 2005

Dear State Medicaid Director:

Beginning January 1, 2006, full benefit dual eligible individuals will receive drug coverage through the Medicare Prescription Drug Benefit (Part D) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, rather than through their state Medicaid programs. However, certain drugs are excluded from coverage under the new Medicare Prescription Drug Benefit. As described more fully in the Federal regulations at 42 CFR 423.772 of the final rule implementing the Medicare Prescription Drug Benefit, full benefit dual eligibles are individuals who have Medicare and full coverage under Medicaid. To the extent that state Medicaid programs cover the excluded drugs for Medicaid recipients who are not full benefit dual eligibles, states will be required to cover the excluded drugs for full benefit dual eligibles with Federal financial participation (FFP). This letter explains the requirements in Federal law for coverage of these excluded drugs and asks state Medicaid programs that cover these excluded drugs to consider continuing this coverage for all Medicaid recipients, including full benefit dual eligibles, after the transition of dual eligibles to the Medicare drug benefit.

Section 1935(d)(2) of the Social Security Act (the Act) and implementing Federal regulations at 42 CFR 423.906(c) give states the option to provide coverage of the excluded drugs: (1) in the same manner as provided for Medicaid recipients who are not full benefit dual eligibles, or (2) through an arrangement with a prescription drug plan (PDP) or a Medicare Advantage prescription drug plan (MA-PDP). Based on these provisions, a question has arisen as to whether state Medicaid programs can cover the excluded drugs for Medicaid recipients who are not full benefit dual eligibles without also covering such drugs for full benefit dual eligible individuals. As explained more fully below, the answer is no.

Section 1902(a)(10)(B) of the Act requires that the coverage afforded to each categorically needy individual eligible under the state plan be equal in amount, duration, and scope to the coverage afforded to all other categorically needy individuals. In addition, coverage afforded to categorically needy eligibles must be no less in amount, duration, and scope than that provided to medically needy individuals covered under the state plan. Neither section 1935(d)(2) of the Act nor the implementing regulations alter this requirement. Rather, these provisions give states that have chosen to cover the excluded drugs for all categorically eligible and/or medically needy individuals an option as to *how* to implement such coverage for full benefit dual eligible individuals. Accordingly, to the extent a state chooses to cover excluded drugs for Medicaid recipients who are not full benefit dual eligibles, the state also must cover them for full benefit dual eligibles. Conversely, to the extent that a state chooses to cover excluded drugs for full benefit dual eligibles, the state also must cover them for Medicaid recipients who are not full benefit dual eligibles. This is the case regardless of whether the state Medicaid program opts to

cover such drugs for full benefit dual eligibles in the same manner as provided for Medicaid recipients who are not full benefit dual eligibles or through an arrangement with a PDP or MA-PDP.

The drugs excluded from coverage under the Medicare Prescription Drug Benefit include those drugs identified at section 1860D-2(e)(2)(A) of the Act and implementing Federal regulations at 42 CFR 423.100, and any other drug that does not meet the definition of a Part D drug under section 1860D-2(e)(1) of the Act and implementing Federal regulations at 42 CFR 423.100. Among the excluded drugs are certain drugs or classes of drugs, or their medical uses, that states have the authority to exclude under the Medicaid program as specified in section 1927(d)(2) of the Act. Benzodiazepines and barbiturates are included in this category and therefore cannot be covered by PDPs or MA-PDPs that offer a basic Medicare Prescription Drug Benefit. In accordance with the discussion above, however, state Medicaid programs can cover these drugs for full benefit dual eligibles and receive FFP for doing so.

Benzodiazepines and barbiturates are prescribed in the treatment of disorders such as generalized anxiety, insomnia, and seizures—disorders commonly diagnosed in the elderly population. State Medicaid programs currently spend about \$56 million in state monies on benzodiazepines and barbiturates for the dual eligible population. The vast majority of benzodiazepines have been identified in the Beers List, a guide that identifies medications or classes of drugs that should be avoided by the elderly. Part D formularies will cover alternative treatment options for those disease states for which benzodiazepines are prescribed. However, because the potential exists for severe adverse effects in patients who abruptly discontinue the use of these drugs and because care must be taken to transition individuals to the safer alternatives, states that currently provide coverage of these drugs for the elderly may wish to continue to do so after the transition to Medicare in order to maintain continuity of care for this population.

If you have any questions regarding this letter and Medicaid coverage of prescription drugs, please contact Deirdre Duzor, Director of CMSO's Division of Pharmacy, at 410-786-4626. Please direct any questions on Medicaid eligibility to Ginni Hain, Director of CMSO's Division of Eligibility, Enrollment and Outreach, at 410-786-6036.

Sincerely,

/s/

Dennis G. Smith
Director

cc:

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