

Qualified SPAP Guidelines

Overview: States that operate State Pharmaceutical Assistance Programs (SPAPs) providing subsidized drug coverage to individuals who will be eligible for the Medicare prescription drug plan will save substantially starting in 2006, when Medicare begins providing very generous coverage for beneficiaries with limited means. As a result of the savings on SPAP beneficiaries who will qualify for the low-income Medicare coverage, states can wrap-around the Medicare benefit by enhancing or extending coverage, at a lower cost to the state.

This document provides guidance regarding the appropriate role for SPAPs as we work together to implement the new Medicare drug benefit. Key issues include how an SPAP may provide supplemental benefits or wrap-around coverage for Part D beneficiaries while remaining qualified as an SPAP under 1860D-23 of the Social Security Act (the Act) and what information and benefits states can provide without violating the non-discrimination provision. We describe activities related to the following four areas and provide recommendations as to:

- I. Education on Part D plans,
- II. Co-branding (marketing) with Part D plans,
- III. Enrollment, and
- IV. Providing financial assistance.

All qualified SPAPs will have access to the following:

1. CMS will provide transitional grants, if applicable.
2. CMS will periodically accept and process files from the SPAP to identify SPAP enrollees and match these against CMS records for Part D enrollees.
3. CMS will periodically transmit files on matching Part D enrollees back to the SPAP providing information on the Part D plan in which the individual is enrolled and on the level of the low-income subsidy the individual qualifies for.
4. CMS will promptly notify Part D plans that a qualified SPAP is a secondary payer for each SPAP enrollee as soon as that information has been received from the SPAP.
5. Part D plans will be required to coordinate benefits with each SPAP in their service area. Required coordination of benefits consists of:
 - a. SPAP supplemental claim payments (if applicable) will be counted toward TrOOP
 - b. SPAP supplemental claim payments (if applicable) will be handled through the TrOOP facilitation contractor to expedite secondary payer claim processing and communication of final payment amounts to the primary payer.
 - c. SPAP payments of consolidated premiums or other lump sum amounts will be facilitated and reconciled on a timely basis by the Part D plan.
 - d. Information on individual enrollee claims (including enrollee out-of-pocket costs but not primary payment amounts) will be provided to SPAPs

that choose not to provide wrap-around secondary claim payment coverage.

- e. Part D plans may charge SPAPs fees solely for costs related to coordination of benefits.

I. Education

The MMA provides \$62.5 million in funding for grants to State Pharmacy Assistance Programs (SPAPs) with approved applications for each of Federal fiscal years 2005 (October 1, 2004-September 30, 2005) and 2006 (October 1, 2005-September 30, 2006). The grants are based on the number of Medicare participants enrolled in each program as of October 1, 2003. The grants are to be used to educate SPAP participants eligible for the Medicare Part D benefit about the prescription coverage available under Prescription Drug Plans (PDP) or Medicare Advantage plans that offer a prescription drug benefit (MA-PD); provide technical assistance, phone support, and counseling in order to help SPAP participants eligible for the Medicare Part D benefit select and enroll in Part D plans; and support other activities that promote effective coordination of enrollment, coverage, and payment between the SPAPs and Part D plans. We released to the SPAP workgroup specific activities states may engage in when using its transitional grant funds.

While CMS will ensure that Part D plans provide adequate drug formularies and pharmacy networks that will meet the needs of all Part D beneficiaries, we understand that beneficiaries may look to their current SPAPs as a trusted ally when determining what Part D plan they should enroll in. Beneficiaries may request that SPAPs provide guidance regarding Part D plan formularies, preferred drug lists, prior authorization rules, cost sharing, premium payments, pharmacy networks and transition processes. In response to the beneficiary's request for information, we believe SPAPs can educate their beneficiaries about the Part D plans':

- Pharmacy networks that include the beneficiary's current pharmacy, or pharmacies within a specific distance to a beneficiary's place of residence.
- Mail order pharmacies.
- Prior authorization programs.
- Transition processes for when a beneficiary's drug is not on the Part D plan's formulary.
- Comparative premiums and cost sharing.
- Enhanced benefits.

As long as SPAPs provide the Part D plan information on all Part D plans, we believe these activities do not create steerage in a way that violates the non-discrimination provision.

II. Co-Branding

Section 1860D-23(c)(2) of the Act provides that a card that is issued by a Part D plan may also be used in connection with coverage of benefits provided under a State

Pharmaceutical Assistance Program and, in such case, may contain an emblem or symbol indicating such connection.

The SPAP can offer to co-brand with Part D plans by setting reasonable standards for co-branding, as long as these standards are consistently applied to all Part D plans. Whether a Part D plan chooses to co-brand with the SPAP, or not, is completely up to the Part D plan. Also, if a Part D plan approaches the state to co-brand, the SPAP may do so as long as the SPAP agrees to co-brand with all Part D plans that approach them. Both the SPAP and the Part D plan wishing to co-brand must notify CMS in advance, and agree to adhere to all applicable marketing guidelines.

States should keep in mind that co-branding is a version of education and that the principles outlined in the education portion of this document would also apply when co-branding materials. For example, the SPAP could not require that the Part D plan provide the same formulary as the SPAP's formulary. However, CMS would not consider it discriminatory if the SPAP informed the beneficiary, during its education and outreach campaign, which Part D plans have agreed to co-brand. We do not believe that this would discriminate against other Part D plans, as long as all plans had been approached with the offer to co-brand and the standards offered by the state to co-brand are the same for all plans. As long as the SPAP gives Part D plans equal opportunity to co-brand with them, and is providing the same benefits for all beneficiaries regardless of the co-branded Part D plans, the SPAP remains "qualified." Also,

III. Enrollment

Section 1860D-23(b)(2) of the Act defines an SPAP, in part, as a program that "in determining eligibility and the amount of assistance to Part D enrollees, provides assistance to such individuals in all Part D plans and does not discriminate based upon the Part D plan in which the individual is enrolled." In our final rule at 42 CFR 423.464(e)(1)(ii), we interpreted the non-discrimination provision to mean that when SPAPs offer premium assistance or supplemental assistance for Part D cost sharing, they must not only offer equal assistance to beneficiaries enrolled in all Part D plans available in the State but also may not steer beneficiaries to one plan or another through benefit design or otherwise. We believe that by allowing beneficiaries to have access to all Medicare prescription drug plan options, we can assure that all Part D beneficiaries get the best value for their coverage. In the preamble of the final rule, we further specified that "even if under State law a State is the authorized representative of its SPAP enrollees for purposes of enrolling them in a Part D plan elected by the State, if it auto-enrolls beneficiaries into a select plan, the State program will no longer meet the statutory definition of SPAP under section 1860D-23(b) of the Act."

Thus, a qualified SPAP may not discriminate among available plans and must offer equal assistance to members enrolled in all Part D plans. In the preamble of the final rule, we stated that to the extent an SPAP assists the enrollment into Part D of its members who fail to elect a Part D plan during their initial enrollment period or upon joining the SPAP, we encourage SPAPs to mirror our procedures for random enrollment of full-benefit dual

eligible individuals into Part D plans with premiums at or below the low income benchmark.

However, we believe that there are ways for SPAPs to enroll their members other than randomly among all Part D plans that can balance the desire for beneficiaries to enroll in plans that meet their personalized needs with the requirement that SPAPs comply with the non-discrimination provision. For example, SPAPs may have access to individualized data about their members that can be used to facilitate enrollment for certain groups of individuals into plans that are best suited for them, in terms of pharmacy networks or specific drug needs. We are committed to working with SPAPs to develop an effective method of achieving this objective, while still working within the non-discrimination requirement.

CMS has developed an elaborate review process to ensure that all Medicare prescription drug plans offer comprehensive benefit packages that generally meet the medication and pharmacy needs of all Medicare beneficiaries. These plans will reflect best practices in the pharmacy industry as well as current treatment standards for all Medicare beneficiaries. Within this overall framework, we believe that SPAPs should be able to identify objective criteria (subject to CMS approval) that can narrow the range of Part D plan options an SPAP would use to effect an enrollment for a member. Examples of the type of criteria that could be taken into consideration include:

- Pharmacy networks that include a member's pharmacy or a pharmacy that is as close or closer to the member's residence.
- Premium and cost-sharing rules that are tailored to a member's anticipated medication needs
- Plan policies that limit transition issues for patients with complex diseases or sensitive medication needs.

To the extent that an SPAP can identify such criteria for subgroups of their member population, CMS would approve enrollment of these subgroups on a random basis among PDPs that meet the given criteria. Thus, by using member-level information on drug utilization and pharmacy preference for example, an SPAP would be able to assure that each member is enrolled in a plan that is appropriate to his or her circumstances without violating the non-discrimination provision.

Approach: We strongly encourage SPAPs to work with us as early as possible as they develop their plans to enroll their members in Medicare prescription drug plans. This way, we can anticipate and plan for issues accordingly and work toward their timely resolution. Overall, SPAPs should adopt the following approach if they are to enroll their members as the authorized representative under State law:

- Educate their members about all their Part D plan choices prior to taking any action;
- Discuss any plans to enroll their members with CMS well in advance of the actual enrollment;

- Submit, for CMS approval, any standardized criteria that the SPAP is planning to use as the basis for enrolling its members;
- Send a CMS-approved notice to their members in advance of any enrollment action taken on their behalf that explains what is happening and how they can decline such enrollment; and
- Notify CMS when it sends enrollment requests to the plans.

We will require SPAPs that exercise their authority as their members' legal representative to submit evidence of authorized representative status, such as a copy of authorizing State law, when they submit enrollment requests to a prescription drug plan. This will ensure that there is documentation for any enrollment requests submitted to the plan by the SPAP and that the process at the PDP for accepting enrollment requests made by authorized representatives is uniform. We will also work with the SPAP to ensure that the criteria are standard and appropriate for use and do not create the net effect of steering all members to one Part D plan. These necessary safeguards will serve to mitigate any unintended effects on SPAPs, Part D plans, and beneficiaries resulting from a violation of CMS statutory and regulatory requirements.

IV. Financial Assistance

Section 1860D-23(b)(2) of the Social Security Act requires that in order for a state pharmacy assistance program to qualify as an SPAP and have its supplemental coverage of drugs count towards the TrOOP, it must provide assistance to Part D eligible individuals in all Part D plans without discriminating based upon the Part D plan in which an individual enrolls. We further clarify in the preamble to the final regulation implementing Part D that "...SPAPs, if they offer premium assistance or supplemental assistance for Part D cost sharing, must not only offer *equal assistance* to beneficiaries enrolled in all Part D plans available in the State, but also may not steer beneficiaries to one plan or another through benefit design or otherwise." In response to the preamble's interpretative language, States with SPAPs have requested guidance as to what we mean by "equal assistance" and "steer...through benefit design" when providing wrap-around coverage to its beneficiaries.

CMS is ultimately concerned that when an SPAP provides supplemental or wrap-around coverage to its SPAP beneficiaries, this coverage does not result in steering a beneficiary towards a particular plan and impact the competitive nature Congress intended in the Part D program. The benefit design options listed below may influence a beneficiary to choose one plan over another, however, it will not be a detriment to the competitive Part D plan market Congress envisioned under this program.

The following describes the different benefit designs states may consider when providing supplemental coverage to its beneficiaries.

- SPAP pays premium in full for their basic benefit premium only.

- SPAP provides a lump sum capped amount of funds that the beneficiary can use towards the basic premium, supplemental premium, and/or out-of-pocket costs.
- SPAP provides wrap-around secondary claim payment coverage only.
- Combination of the above.

SPAPs may also pay the premium for supplemental coverage provided by Part D plans as long as the state does not limit its SPAP coverage to only those beneficiaries who enroll in Part D plans that provide supplemental coverage. States would also need to offer wrap-around coverage comparable to the benefits provided under the supplemental Part D benefits to individuals choosing to enroll in a Part D plan that does not offer supplemental benefits.

As stated earlier, CMS' COB system capabilities will simplify SPAPs' implementation of wrap-around secondary claim coverage with multiple Part D plans by effectuating the SPAP payment at the point-of-sale. We will make sure all states with qualified SPAPs are on track with the COB system requirements, and that states take advantage of these systems when processing their beneficiaries' claims.