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Medicare Reform and Prescription Drug Coverage: Implications for States

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Medicare Prescription Drug, Improvement, and Modernization Act of 2003

KEY PROVISIONS THAT IMPACT STATES

Regulations Galore

- CMS implementing >300 provisions in the new law.
- Law has some details, but there are many unanswered questions.
- Leslie Norwalk, acting deputy administrator of CMS, says she expects that many of the details of the drug benefit will “be worked out when regulations for the law are written.”

Key Provisions Impacting States

- Clawback, aka MOE, aka Reverse Block Grant
- Wrap Around “penalty”
- New Administrative Costs
- Woodwork Effect
- Medicare Cost Sharing
- SPAPs
- Drug Discount Card

Key Provisions Impacting States

- DSH
- Employer Subsidy
- New Medicare Payments
- Tax Provisions
- Cost Containment
- No Importation on Drugs from Canada

Clawback Provision

- Medicare pays Rx for dual eligibles, then claws back at states' savings.
  - 90% MOE in 2006, decreasing to 75% in 2015
- Clawback uses base year 2003, trended forward FY 04-06 (Nat'l Health Expenditures). Beginning 2007, base inflated by Part D actual costs (national).
- States get deeper Medicaid drug discounts based on volume—so will lose leverage (50%+ less drug spending for state Medicaid programs for Rx w/o duals).
  - Therefore, more expensive drugs for remaining Medicaid population?

Clawback Provision

- Medicare drugs are excluded from the Best Price Rule.
- First time that Medicare benefit is not fully financed by feds.
- Clawback formula locks in inequities forever due to 2003 base:
  - States with comprehensive Rx coverage and eligibility
  - States with lower federal matching rates
  - States with large numbers of duals/sicker duals

Beginning 2007, clawback inflation is based on Part D actual costs…

- States will have no control over costs/MOE.
- States did good job of containing costs via PDLs, supplemental rebates, multi-state Rx pool.
- No Best Price Rule.
- Might states incur costs, not savings?
- HHS Sec cannot interfere with negotiations, require particular formularies, institute price structures for reimbursement.

Wrap Around "Penalty"

- Dual eligibles have no Medicaid prescription drug coverage January 1, 2006 and may enroll in Medicare Part D.
- States can wrap around Medicare coverage for duals at 100% state cost.
  - States will have to coordinate with multiple PDPs, formularies, preferred lists.
- Yes, "medically necessary" drugs to be covered by Medicare, but beneficiary must use appeals process, so gaps can occur.
- No prohibition in new law on Medicare drug limits (eg # of prescriptions).
- Difficult to estimate state wrap around impact without knowing Medicare formularies and limits, how appeals process will work, seeing HHS regulations.

New Administrative Costs

- New responsibilities/administrative costs for eligibility determinations for low income assistance (not just Medicaid populations) for drug card and Part D benefit.
  - Will states coordinate with SSA?
- Full federal funding not provided for the administrative costs of this mandate (states receive FMAP).
- CBO: number of people newly eligible for Medicare low income benefit exceeds number of people enrolled in Medicaid today!

Woodwork Effect

- Medicaid populations will increase as individuals seek discount card/new Part D benefit and find out they qualify for Medicaid.
- Double whammy: More Medicaid spending + higher clawback.

Medicare Cost Sharing

- Medicare deductible increasing:
  - Part B deductible increases in 2005 from $100 to $110, then indexed.
- QI-1 program extended through FY08.
- States may choose to pay coinsurance/copays.
  - 5%/10% coinsurance--discount card.
  - $1/$3 and $2/$5 copays for Part D (indexed to CPI).

State Pharmacy Assistance Programs (SPAPs)

- States with SPAPs should experience positive monetary impact due to $600 subsidy on discount card + Medicare Part D benefit.
  - 30 SPAPs cover 1.5 million people.
  - IL, NY, NJ, PA account for >50% of people enrolled in SPAPs.
- Some SPAPs are more generous than the Medicare law.
- PDPs can impose fees on SPAPs for coordination.
- Commission to deal with transitional issues facing SPAPs.

State Pharmacy Assistance Programs (SPAPs)

States can:

- End SPAPs
- Cover gaps (card fee, premiums, copays, deductibles, donut hole)
- Expand SPAPs
- Apply for $125 million grants FY05-06 for coordination with Part D and education.

Discount Drug Card

- Federal estimates of drug discounts: 10-25%.
- Public entities cannot be discount card sponsors.
- Free card if ≤135%, no Rx coverage, plus get $600 low income subsidy.
  - ≤100% FPL: 5% coinsurance
  - 101-135% FPL: 10% coinsurance
  - Dual eligibles, Pharmacy Plus excluded from subsidy
- Covered drugs and discounts can change after beneficiary signs up for card.

DSH

- States lost $1 billion+ in FY03 as temporary increases in DSH expired.
- New Medicare law increases ceilings for FY04 and beyond:
  - 16% increase for FY04. Post FY04=FY04 amount or some get increase based on CPI.
  - Low DSH states get 16% increase each year FY04-08. FY09+ adjusted to inflation.
- Annual reports required to HHS re: DSH hospitals, “other info as the Sec determines necessary,” and independent certified audit re: uncompensated care costs.

Employer Subsidy

- 28% subsidy for states that continue Rx coverage for retirees.
  - Costs per year per retiree must be >$250, <$5,000 for plan year.
  - State drug coverage must be actuarially equivalent or better than Part D standard coverage.
- Or… States can drop coverage (retirees get Medicare only).
- Or… States can wrap around new Medicare benefit-but payments don't count toward out of pocket expenses.

New Medicare Payments

- Medicare will begin paying for some services that Medicaid has been paying for dual eligibles:
  - Initial preventive physical exam
  - Diabetes screening tests
  - Heart Disease screening blood tests
  - Improved mammogram payment
  - Chronic care improvement program

Tax Provisions

- Many groups believe tax provisions in new law will have net zero impact on states:
  - States could gain revenue if some employers drop health coverage for retirees, which would reduce their exclusion for health benefits provided.
  - States could lose revenue due to
    - 28% federal subsidies to private employers being excluded from income tax
    - Individuals' taxes avoided due to Health Savings Accounts.

Cost Containment

- Yearly reports required on Medicare spending.
- President required to submit legislation if Medicare spending is in excess of general revenue Medicare funding.
- States are concerned that if costs are too high, clawback provision could be tweaked and made even worse.

No Importation of Drugs From Canada

- HHS Secretary to promulgate rules on importation of prescription drugs from Canada ONLY IF the Secretary certifies to Congress that there will be "no additional risk to the public's health and safety" and it will result in a "significant reduction in the cost of covered products to the American consumer."

Many Unknowns

- How will 1115 waiver states be treated re: "full dual" or "partial dual" status with respect to the clawback counts?
- How will formularies, physicians' decisions that a drug is medically necessary, and the appeals process mesh?
- How will "preferred drug lists" and "tiered formularies" be structured?
- What happens if a Medicare beneficiary does not pay his/her copay?
- Is the clawback based on calendar year 2003 or fiscal year 2003?

Many Unknowns

- What will happen if a dual eligible chooses not to enroll in Part D?
- Will some states be worse off with the clawback than otherwise?
- How will the feds handle education of dual eligibles re: elimination of Medicaid prescription drug coverage and the new Medicare Part D benefit?
- What will happen with existing discount card programs (state/county/pharma-sponsored)? Many are free for seniors.
- Do the new pharmacy medication management program costs get factored into the “actual part D drug costs?” Many states do not pay for this now. If these costs are factored in, will this create a more costly MOE for states?