Medicare Coverage Gap Discount Program to Provide Economic Relief to Medicare Part D Enrollees by Closing the Donut Hole

By Cynthia S. Marietta, J.D., LL.M. (Health Law)
csmarie@central.uh.edu

Introduction

Most Medicare enrollees will soon experience the benefit of some economic relief with the onset of the Medicare Coverage Gap Discount Program (Discount Program),¹ which is designed to reduce out-of-pocket expenses for enrollees in the Medicare Prescription Drug Benefit Program (Medicare Part D).² The Discount Program, as enacted into law on March 23, 2010, is outlined in section 3301 of the Patient Protection and Affordable Care Act (PPACA),³ and amended in section 1101 of the Health Care and Education Reconciliation Act (HCERA)⁴ and codified in Part D sections 1860D-42, 43 and 1860D-14A of Title XVIII of the Social Security Act.⁵

The Medicare Part D program, which became effective in January 2006, is a voluntary outpatient prescription drug benefit for individuals who are entitled to Medicare Part A or enrolled in Medicare Part B.⁶ CMS contracts with private companies, referred to as Part D sponsors, to administer the Part D program using stand-alone prescription drug plans (PDPs) and prescription drug plans offered by Medicare Advantage organizations (MA-PDs).⁷ Part D sponsors offer plans with either a defined standard benefit or an alternate equal in value and may also offer enhanced plans.⁸

In 2010, Medicare beneficiaries with standard Medicare Part D drug coverage are subject to pay an annual deductible of $310.00 and 25 percent coinsurance up to their initial coverage limit of $2,830.⁹ When beneficiaries reach the coverage limit, they enter into the phase where they experience a gap in coverage, known as the donut

³ Patient Protection and Affordable Care Act, supra note 1.
⁴ The Health Care and Education Reconciliation Act, supra note 1.
⁶ CMS Memorandum, supra note 2.
⁷ Id.
Once in the donut hole, beneficiaries must pay 100 percent of their prescription drug costs until they have spent $4,550 out-of-pocket, at which time they then qualify for catastrophic coverage. When catastrophic coverage kicks in, beneficiaries are required to pay only 5 percent of drug costs for the remainder of the year. In 2007, an estimated 3.4 million Part D enrollees, or 14 percent of all enrollees, reached the coverage gap or donut hole.

The Discount Program is designed to reduce the out-of-pocket expenses that Part D beneficiaries must pay once they reach the donut hole gap in coverage. This coverage gap strategically exists because the cost of providing continuous coverage would exceed the legislative budgetary restrictions for the Part D program.

The Department of Health and Human Services (HHS), through the Centers for Medicare and Medicaid Services (CMS), is responsible for implementing the Discount Program and entering into agreements with drug manufacturers and outlining their requisite duties. CMS has until January 1, 2011 to establish the rules and regulations for the Discount Program. The deadline for CMS to establish a model agreement for use with drug manufacturers under the Discount Program is no later than September 30, 2010. CMS must consult with manufacturers on the agreement and allow a time period for comment on the model agreement.

On April 30, 2010, CMS issued a Memorandum, the purpose of which was to provide Part D sponsors with draft guidance for implementing the Discount Program. The guidance addresses specific requirements and procedures to effectively implement the program, including point-of-sale discounts, manufacturer discount payments, conditions for coverage under Part D, applicable drugs, applicable discounts for beneficiaries, the dispute resolution process, and program monitoring and oversight. The public comment period for this guidance document closed on May 14, 2010. CMS will issue a final guidance after considering all public comments.

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10 The Health Care and Education Reconciliation Act, supra note 1, expressly spells the term as “donut hole,” however, publications and articles sometimes refer to the term as “doughnut hole.”
11 CMS Memorandum, supra note 2, at p. 2; Levey, supra note 6.
12 Id.
14 CMS Memorandum, supra note 2, at p.2.
16 CMS Memorandum, supra note 2, at p.1; Patient Protection and Affordable Care Act, supra note 1, at § 1860D-14A(d)(5).
17 Health Care and Education Reconciliation Act, supra note 1, at § 1101(b)(2)(i).
18 Id. at § 1101(b)(2)(a)(ii).
19 Patient Protection and Affordable Care Act, supra note 1, at § 3301(b), subsec. 1860D-14A(a).
20 CMS Memorandum, supra note 2, at p.1.
21 Id. at pp. 1-11.
22 Id.
23 Id.
Overview of Pertinent Provisions of the Discount Program

The two-fold objective of the Discount Program is to reduce the amount that Part D beneficiaries must pay for their prescription drugs while concurrently closing the coverage gap over the next ten years. Beginning in 2011, the Discount Program will gradually phase in different levels of subsidies for enrollees caught in the donut hole when they purchase brand-name and generic drugs. The pertinent provisions are as follows:

1. On June 10, 2010, the Department of Health and Human Services (HHS) began issuing $250 rebate checks to the first 80,000 Part D beneficiaries who enter the donut hole. Checks will continue to go out monthly until the end of the year as more beneficiaries experience this gap in coverage. Approximately 4 million beneficiaries are expected to receive the rebates.

This is a one-time rebate for those beneficiaries not already receiving Medicare Extra Help. The $250 rebate represents the first steps in gradually closing the donut hole coverage gap over the next decade.

2. Beginning in 2011, Part D beneficiaries who reach the donut hole will receive a 50 percent discount on the total cost of their Part D-covered brand-name drugs, as agreed by pharmaceutical manufacturers.

3. From 2011 through 2020, CMS will gradually phase in additional subsidies for Part D-covered generic drugs (beginning in 2011) and brand-name drugs (beginning in 2013), which will effectively reduce the beneficiary coinsurance rate for those in the donut hole from 100 percent to 25 percent by 2020.

(a) By 2020, for covered brand name drugs, Part D beneficiaries will receive a 50 percent discount from pharmaceutical manufacturers, plus a 25 percent federal

26 Levey, supra note 6.
27 Id.
28 Medicare and the New Health Care Law, supra note 25. Part D beneficiaries with low incomes (less than $16,245) and modest assets (less than $12,510) who are eligible for low-income subsidy (LIS) may receive “extra assistance” through substantial premium and cost-sharing assistance. Dual eligibles, QMBs, SLMBs, QIs, and SSI-onlys automatically qualify for this additional assistance. See Medicare Fact Sheet, supra note 8.
30 Explaining Health Care Reform, supra note 24; see also Medicare and the New Health Care Law, supra note 25.
subsidy (phased in beginning in 2013). Part D beneficiaries will be responsible for only 25 percent of their total out-of-pocket costs for cost of their brand-name drugs.

(b) By 2020, for covered generic drugs, 75 percent of the cost of generic drugs will be subsidized by CMS (phased in beginning in 2011), with beneficiaries paying the remaining 25 percent out-of-pocket.

4. Between 2014 through 2019, the out-of-pocket threshold amount that qualifies a beneficiary for catastrophic coverage will be reduced. This will effectively reduce the out-of-pocket costs for those beneficiaries with relatively high prescription drug expenses. In 2020, the catastrophic coverage threshold level will revert to the pre-2014 threshold level.

Implications for Medicare Eligible Employees or Retirees

Medicare eligible individuals, who are either employed or retired and have health insurance benefits through their current or former employers, should closely monitor the notices issued by their employer-sponsored plans. Specifically, they should be on the look-out for the Notice of Creditable Coverage document and other notices concerning Medicare Part D enrollment periods.

A Notice of Creditable Coverage confirms that the prescription drug coverage for the particular drug benefit plan is at least as good as, or is comparable to, the Medicare Part D Plan.31 In other words, creditable coverage means the drug benefit coverage is expected to pay on average as much as the standard Medicare Part D drug plan.32 Consulting actuaries make the determination whether a group health prescription drug plan is comparable to the benefits provided by Medicare Part D.33

Sponsors of prescription drug plans must timely notify CMS whether their drug coverage is creditable or non-creditable.34 These sponsors must also provide, or arrange for providing, an applicable Notice of Creditable Coverage to all Medicare eligible policyholders covered by their particular group drug plan.35 Employer-sponsored plans with deemed creditable coverage typically discourage their Medicare eligible policyholders from enrolling in the Medicare Part D program (when they become Medicare eligible) because the employer-sponsored plan is comparable or

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32 Id.


34 CMS Creditable Coverage, supra note 31.

35 Id.; see also ERS Notice of Creditable Coverage, supra note 31; ERS Frequently Asked Questions, supra note 33.
better. As long as the Medicare eligible employees or retirees have the Notice of Creditable Coverage document in hand, they can maintain their employer-sponsored drug benefit coverage and will be entitled to enroll in the Medicare Part D program when they desire to do so at a later date during a later specified enrollment period without having to pay a penalty, or higher premium.

By way of example, the Employees Retirement System of Texas (ERS) administers prescription drug benefits through its insurance program, Group Benefits Program (GBP). Likewise, the Teachers Retirement System of Texas (TRS) administers prescription drug benefits through TRS-ActiveCare. The drug benefits plans under both GBP and TRS-ActiveCare have been deemed to qualify as creditable coverage in 2010, and ERS and TRS issued the requisite Notices of Creditable Coverage to their Medicare eligible policyholders, respectively. These policyholders can either choose to enroll in Medicare Part D when they become eligible at age 65, or they can continue their current coverage under their GBP or TRS group drug plans. As long as they retain the Notice of Creditable Coverage document, they can opt to enroll in Medicare Part D when they decide to do so at a later specified date without paying a penalty.

At this juncture, it is unknown what effect, if any, the changes to Medicare Part D and the Discount Program will have on the comparability ratings of employer-sponsored prescription drug benefit plans, and thus, whether such plans that have previously issued Notices of Creditable Coverage will continue to do so. Medicare eligible employees and retirees who have drug benefits under an employer-sponsored or group plans must be attentive to whether their plans issue a Notice of Creditable Coverage on an annual basis. If not, the Medicare eligible individuals must timely enroll in Medicare Part D, or otherwise face paying a higher premium for late enrollment.

Conclusion

The Discount Program, designed to phase-out the Part D coverage gap over the next ten years, should prove to be helpful in reducing beneficiaries’ out-of-pocket drug expenses over time. In addition to saving money, the ultimate effect will be to hopefully improve overall health outcomes for those enrollees who could not otherwise afford to buy their necessary drugs when caught in the donut hole. The $250 rebate checks set to be issued starting in June 2010 represent the first tangible

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36 ERS Notice of Creditable Coverage, supra note 31; ERS Frequently Asked Questions, supra note 33.
37 Id.
38 See id.; see also ERS, Overview of Insurance Benefits, available through http://www.ers.state.tx.us.
benefits of the Discount Program. It is unknown at this point what effect, if any, the Discount Program will have on employer-sponsored prescription drug benefit plans and whether these plans will continue to maintain prescription drug coverage comparable to the Medicare Part D program.

**Health Law Perspectives (July 2010)**
Health Law & Policy Institute
University of Houston Law Center
http://www.law.uh.edu/healthlaw/perspectives/homepage.asp

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