

PLEASE DISTRIBUTE

November 6, 2006

California Low-Income Health Advocate Alert On Medicare Part D

More information on Medicare Part D, including past Alerts, can be found at www.cahealthadvocates.org/cmc/index.html website, and <http://www.nsclc.org/areas/medicare-part-d>.

NSCLC Launches New Website

NSCLC has launched a new website! Still found under the same domain name (www.nsclc.org), the site provides a more user friendly format for accessing information about Medicare Part D and other issues affecting seniors and people with disabilities. Information on Medicare Part D can be found by going directly to the Medicare Part D page at <http://www.nsclc.org/areas/medicare-part-d>. California specific information is available at http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724.

Here are some highlights of the new site:

- **Latest Developments on Part D in California:** including the latest information on changes to the benchmark plans. http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724
- **Tools for advocates:** Materials designed to help advocates understand Part D; includes information on exceptions and appeals, a comparison of enrollment differences between PDPs and MA-PDs, the LIS, Redetermination and Redeeming and more. http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.4596471630
- **Tools for California Advocates:** Materials discussing the specific impact of Part D on low income Californians. http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724/area_folder.2006-09-29.4343109026
- **The California Low Income Health Advocate Alert:** Copies of every Alert listed in order of release date. http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724/area_folder.2006-09-29.4648799376
- **Federal and State Agency Materials:** Compilations of important materials and guidance released by CMS, SSA and DHS. http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.5758698482/area_folder.2006-10-12.2240438420 (CMS and SSA) and http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724/area_folder.2006-09-29.4942170955 (DHS)

Please take a minute to bookmark the new site!

<http://www.nslc.org/areas/medicare-part-d>

I. State Update

Reassignment Update

*This information is an **update** to information provided in the last Alert and at the Low Income Advocates Part D Conference in Los Angeles on October 11, 2006.*

As stated in the last Alert, in California, full-premium subsidy beneficiaries in 4 of the 10 benchmark plans from 2006 will need to change plans in order to maintain a \$0 premium in 2007. CMS created a “reassignment” policy which would automatically move some of these beneficiaries into a new plan that is qualified for a \$0 premium.

Since the last Alert, we have learned that CMS may not be following the policies outlined in its reassignment memo to the plans. CMS has confirmed that **all** LIS beneficiaries (full and partial subsidy; those who self enrolled and those who were auto-enrolled) in **any** UnitedHealthcare product (AARP Medicare Rx, PacifiCare Saver Plan and United Health Rx) will be automatically moved to AARP Medicare Rx Plan – Saver (UnitedHealthcare’s 2007 benchmark plan). It is unclear what type of notice of the move these beneficiaries will receive. [This information is inconsistent with CMS’ September 22, 2006 memo to plans describing the reassignment process. However, it is the information that CMS and UnitedHealthcare, Inc. have provided.]

CMS confirmed that Health Net Orange 008 enrollees who were originally auto- or facilitated-enrolled into the plan will be reassigned by CMS to Health Net, Inc.’s 2007 benchmark plan – Health Net Orange 002. Full-premium subsidy beneficiaries who self-enrolled into Health Net Orange 008, will not be reassigned and will be liable for a premium in the amount of \$6.97. Partial subsidy beneficiaries who self enrolled into Health Net Orange 008 will not be reassigned and will be liable for their normal percentage of the benchmark amount (25%, 50% or 75% of \$21.03) plus \$6.97. Beneficiaries who are reassigned will, presumably, receive a blue reassignment notice. CMS timelines indicate that these notices should have been mailed during the week of October 30, 2006. CMS recently announced that the notices will not be mailed until the week of November 6, 2006.

An updated version of the chart “What’s Happening to the California 2006 Benchmark Plans?” is available at http://www.nslc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724. Relevant CMS information, including the “blue” reassignment notice, is available at <http://www.cms.hhs.gov/limitedincomeandresources/>.

This above information relating to reassignment is subject to change as CMS releases new details on the reassignment process.

Dual Eligibles Currently Enrolled in Kaiser Medicare HMOs in California will be Passively Enrolled into Kaiser's Special Needs Plans in 2007

All current dual eligibles enrolled in Kaiser HMOs will be "passively enrolled" into Kaiser's Special Needs Plans (SNP), but will be provided an opportunity to "opt out." If a dual eligible opts out of this enrollment, however, s/he will be subject to MA plan premiums and/or cost-sharing. In 2006, there are approximately 49,000 dual eligibles in Kaiser Medicare Advantage (MA) HMO plans throughout California. Ever since the state Medi-Cal program stopped paying MA premiums for dual eligibles at the end of 2005, Kaiser has been subsidizing the MA premium and copayments for its dual eligible members. Since CMS has informed Kaiser that it can no longer do this, Kaiser developed a plan -- approved by CMS -- to "passively enroll" or "map" its 49,000 dual eligible members from their regular Kaiser MA plan (where their Medicare Part A and B premiums and copays are currently subsidized by Kaiser) into a Special Needs Plan (where their Part A/B premiums will continue to be zero) effective January 1, 2007.

According to Kaiser, these duals who are "mapped" will continue to be Kaiser members, seeing the same Kaiser providers as they see now, receiving the same benefits as Kaiser's regular Medicare Advantage members (except for the optional supplemental benefit for massage, acupuncture and enhanced chiropractic), and subject to the same Part D formulary. In addition, they will continue to pay zero premiums and zero copays in 2007 (for Medicare services under Parts A and B), as they do in 2006 (note that they may still have Part D costsharing).

Notices are currently going out to affected Kaiser enrollees. If current Kaiser enrollees do nothing, they will, in effect, be defaulted into a Kaiser SNP. In letters going out to duals, though, they are given the opportunity to "opt out" of this passive enrollment. **If they do choose to opt out, they will remain Kaiser members (unless they change plans) but will be subject to "regular" Kaiser HMO premiums and copayments.**

Emergency Drug Benefit Program Update

As described in previous Alerts, DHS has released updated information regarding the information a pharmacist must provide when filing a claim under the "Problems with a Prior Authorization/Exceptions Request" provision of the Emergency Drug Benefit (EDB). As of September 1st, a pharmacist attempting to bill the EDB program under this provision must submit proof of 1) the physician's submission of a request to the plan and 2) the time of the plan's response. In response to advocates' inquiries, DHS clarified that pharmacists do not need to attach to the TAR a copy of the physician's actual request. Instead, the pharmacist may attest that he or she has spoken with the physician or physician's staff and that the physician or physician's staff said that a request had been submitted. However, if DHS later does an audit of the claim and it turns out that the

physician did not actually submit a request, the pharmacist will be liable for the costs of the prescription. According to DHS, such audits are rare. We remain concerned, however, that these procedures have a serious deterrent effect on the usage of the EBD.

DHS reports that EDB usage is relatively low. In part, this may be because beneficiaries, advocates or pharmacists aren't aware of the system or find it too difficult to use. Advocates are encouraged to request that pharmacists make use of the emergency benefit in circumstances where dual eligibles experience difficulty in accessing drugs under Part D.

For the latest on the EDB from DHS, go to http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.6262442724/area_folder.2006-09-29.4942170955.

II. Federal Update

January-March Special Enrollment Period for Individuals Who Lose LIS Eligibility

The Center for Medicare and Medicaid Services (CMS) has conducted a “redeeming” process to review eligibility of individuals who were automatically eligible for the LIS in 2006 because they were dual eligibles, participated in a Medicare Savings Program (i.e., QMB, SLMB, QI) or received SSI. The Social Security Administration conducted a similar process called “redetermination” for individuals who were not automatically eligible, but applied for the LIS and were found eligible for 2006. For detailed information about redeeming and redetermination, see NSCLC’s guide for advocates, “The Low Income Subsidy: Redetermination and Redeeming,” available online at http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.4596471630/article.2006-10-27.0359949819.

Those individuals who no longer qualify for LIS in 2007 will have a one-time Special Enrollment Period (SEP) from January 1 to March 31, 2007. During this SEP, individuals who lost their LIS eligibility may enroll, change or drop their Medicare Part D coverage.

In a new memorandum dated October 5, 2006, CMS instructs plans to reach out to their members who no longer automatically qualify for the LIS and assist them in applying for the LIS for 2007. For each plan, CMS will identify its members who are no longer automatically eligible for the LIS. This notification will occur via a “Special TRR.” CMS will send a Special TRR to the plan for each affected member. This file should have been received by plans by October 6, 2006. CMS will also provide model scripts and notices for plans to use in their outreach. CMS “expects” sponsors to reach out by phone or mail to all of the members CMS identifies. CMS also “expects” that plans will assist members in competing applications for the LIS.

Plans are given the option of postponing for up to three months the collection of premiums and cost-sharing from individuals who are no longer automatically eligible for the LIS, but can demonstrate that they have applied for the LIS. If the plans exercise this option for any member, they must use it for all members. If the member's application is eventually denied, the sponsors may then recoup all unpaid premiums and cost-sharing.

It is important to note that the instructions to plans are phrased as "expectations," not requirements. Furthermore, the outreach plan does not apply to those who applied for (were not deemed) the LIS in 2006 and who are losing it in 2007.

2007 Handbook and Online Information

As of November 7, all beneficiaries should have received the *2007 Medicare & You Handbook* from CMS (many Californians received their copy relatively late because they were part of CMS' "second wave" mailing). Advocates in other states have noticed some discrepancies between information printed in the Landscapes of Plans and the 2007 Handbooks and the information provided via the plan finder at Medicare.gov. For instance, editions in some locations stated that the Coventry Avantra Rx plan provides preferred brand coverage in the doughnut hole, but, as the online information now correctly states, Coventry's enhanced plan provides only generic drug coverage in the gap.

In a October 31, 2006 conversation with advocates, CMS emphasized that its online information is more recent and more frequently updated. Where there is a conflict between written material and the plan finder, the latter is likely more reliable. Furthermore, CMS warns that drug prices can and do change, and therefore the prices listed on the website in November may not stay the same throughout 2007. Formularies on the website are current as of September 26, but there is a final round of formulary approval in early November. Finalized formularies are scheduled to be posted on the website by November 13, 2006.

Unavailability of Web and 1-800-MEDICARE for 2006 Part D Enrollment

Enrollment in Part D plans for the remainder of 2006 has been frustrated by the removal of online enrollment from the Medicare.gov website since mid-October. In addition, 1-800-MEDICARE representatives are also not assisting with 2006 enrollments. CMS' website instructs individuals to contact plans directly to enroll or change plans. Yet some dual or newly eligible clients who have attempted to enroll over the phone have been told (incorrectly) by drug plan representatives that they cannot do so until November 15. As a result, many advocates have found that 2006 enrollment now requires time-consuming and persistent advocacy with plans.

It has also been reported that some plans are not taking enrollments over the phone, but only enrolling individuals after home visits by plan representatives. Please report any

such instances to CMS and also to Anna Rich at the National Senior Citizens Law Center, arich@nsclc.org, 510-663-1055, ext. 303 and David Lipschutz at California Health Advocates, dlipschutz@cahealthadvocates.org, 213-381-3670.

CMS Announces November Attempt to Address Premium Withholding Problems

Individuals who have had premiums for their Part D drug plan or Medicare Advantage plan incorrectly withheld from their Social Security payments may experience a significant change in their November Social Security payment. Approximately 33,000 beneficiaries nationwide will be affected by the November changes.

There are four groups of beneficiaries who will see a change in their November Social Security payment. These four groups are not all of the Medicare beneficiaries who have had premium withholding problems; they are the ones identified by CMS as having the most serious problems. CMS has mailed a letter to each group. Drafts of the letters and additional information are available online at <http://www.cms.hhs.gov/center/partner.asp>.

1. The first group is those whose Medicare Part C premiums, due to a CMS system error, were not withheld in September and October. CMS and SSA have decided to make up the payment by withholding three months' worth of Medicare Part C premiums from the November SS payment of these individuals (about 7,200 beneficiaries nationwide).
2. A second group whose Medicare Advantage premiums were incorrectly entered as zero, and therefore not withheld in September and October, will also face three months' worth of deductions in November. This group includes approximately 8,500 beneficiaries nationwide.
3. A small third group of beneficiaries' prior premium withholding was too low. Their November Medicare withholding will be correspondingly increased. Some of these individuals may have already paid their plan directly, in which case CMS instructs them to contact the plan to request a refund.
4. For the fourth group of about 16,000 beneficiaries, the withholding problem created a discrepancy too large to be resolved in November. Therefore, CMS is canceling these individuals' automatic Social Security withholding. In November, they will receive a refund of all premiums withheld. These beneficiaries will need to save the refund in order to help repay amounts that will be billed to them directly by their Part D or MA plan. CMS has instructed Part D and MA plans to arrange extended payment schedules; plans may not require participants to repay all premiums owed in one lump sum. Once the discrepancies in their accounts have been resolved, these beneficiaries may choose to return to automatic premium withholding. CMS warns that it may take up to three months before a withhold request can be processed.

Some advocates report that plans have sent collection notices and/or threats of disenrollment to beneficiaries with premium withholding problems. CMS, however, has

repeatedly stated that individuals' Medicare health and drug coverage will not be affected by premium problems. Advocates whose clients have been threatened with disenrollment due to Social Security premium withholding problems should file a complaint with CMS.

Transition Drug Supplies

On November 1, 2006, CMS issued a "reminder" regarding Part D transition drug supply policy that, while directed toward plans, sets forth helpful and explicit guidance for beneficiaries in need of a temporary transition supply of a drug.

Beginning in 2007, plans must provide a temporary 30 day supply of a previously prescribed drug to new enrollees anytime within the first 90 days of coverage under a new Part D plan, or after a plan changes its formulary to exclude or restrict access to the drug. For current enrollees who face a change in plan formulary, plans are encouraged to provide an effective transition process or exception review before January 1. If a transition is not complete by the start of the plan year, however, current enrollees also must receive the same 30 day transition as new members. For residents of long-term care facilities, the policy requires a temporary 31 day supply of non-formulary Part D drugs as well as multiple fills for up to 90 days. CMS' recent memo explains the transition drug policy as it applies to particular beneficiary subgroups, and is available online at http://www.nslc.org/areas/medicare-part-d/area_folder.2006-09-28.5758698482/area_folder.2006-10-12.2240438420.

The effect of the policy is still somewhat unclear when an enrollee has an exception request or appeal pending more than thirty days. In that case, CMS "expects," but does not require, plans to "continue providing requested drugs via a case-by-case extension of the transition period."

Clarification of De Minimis Premium Policy

CMS recently issued a clarification of its de minimis premium policy, which allows plans whose premiums exceed the 2007 benchmark amount by \$2 or less to retain full-premium LIS beneficiaries who were auto- or facilitated enrollees in 2006. In California, Sierra Rx is the only 2006 benchmark plan that falls within the de minimis policy for 2007. Sierra Rx's premium amount for 2007 is \$22.40. The California benchmark amount is \$21.03.

In response to inquiries, CMS has now clarified that both continuing and new full-premium subsidy eligible beneficiaries may only be charged a premium equal to the subsidy by Part D plans whose premiums fall within the \$2 de minimis amount. This means that all full LIS beneficiaries enrolled in Sierra Rx in 2007 will not have to pay a monthly premium. It does not matter when the beneficiary enrolled in the plan. Beneficiaries who enroll in 2007 will be treated the same as those who enrolled in 2006. CMS will continue to auto-enroll and facilitate enrollment of LIS beneficiaries into Sierra Rx through 2006. However, Sierra Rx will no longer receive new auto or facilitated enrollments that take effect in 2007.

Partial LIS beneficiaries will not benefit from the de minimis policy. Partial LIS recipients enrolled in Sierra Rx for 2007 will have to pay the entire difference between the plan's premium and the benchmark amount ($\$22.40 - \$21.03 = \$1.37$) in addition to the percentage of the benchmark amount they normally pay (25%, 50%, or 75% of \$21.03).

Additional CMS Materials

In addition to the materials discussed above, CMS has released numerous materials in the last month. Some are in final form, while others were released in draft form for comment.

Webinar

CMS has produced several educational tools to familiarize advocates and beneficiaries with the new online Plan Finder. The most detailed of these is a 33 minute "Webinar," designed for advocates online at http://media.cms.hhs.gov/cms/Navigating_the_Plan_Finder.wmv. Shorter videos designed for beneficiaries and a Powerpoint presentation are also available for downloading.

Tip-Sheet: 2007 Formulary Changes

CMS released a tip sheet on Medicare Part D 2007 formulary changes, available at <http://www.cms.hhs.gov/partnerships/downloads/2007FormularyChanges.pdf>. The tip sheet explains changes to plans, formularies, and utilization management techniques for 2007 based on nationwide, average statistics. It also refers to transition help available to those negatively affected by formulary changes. For advocates, the tip sheet is probably not as useful as the more detailed memorandum on transition supplies described earlier in the Alert.

Draft Data Sharing Regulations Released for Comment

On October 18, 2006, CMS released for comment draft regulations on Medicare Part D data-sharing. Comments are due December 18, 2006.

The draft regulations as printed in the Federal Register can be found at: <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=853027135821+0+1+0&WAISaction=retrieve>

Part D Prescription Drug Benefit Manuals

A new section on the CMS website contains all the Part D Prescription Drug Benefit Manuals, http://www.cms.hhs.gov/PrescriptionDrugCovContra/12_PartDManuals.asp. Chapters 2 (Part C and D Marketing Guidelines), 3 (Part C and D Drugs and Formulary Requirements), 9 (PDP Enrollment and Disenrollment Guidance) and 18 (Part D Enrollee

Coverage Determinations, Grievances and Appeals) are available in final form; Chapters 5 (Benefits and Beneficiary Protections) and 6 (Part D Drugs and Formulary Requirements) are available only in draft form.

III. Information for Advocates

Announcement from CHA

CHA is pleased to announce the following California Medicare Coalition schedule of events:

November 30 – California Medicare Coalition Regional Forum at the Presidian Hotel in Visalia from 9:00 a.m. to 11:00 a.m.

December 6 – California Medicare Coalition Meeting at the Office of the Patient Advocate in Los Angeles from 10:00 a.m. to Noon.

December 7 – California Medicare Coalition Medicare Regional Forum at The Campbell Community Center in Campbell from 10:00 a.m. to Noon.

December 13 – California Medicare Coalition Meeting at the West Berkeley Family Practice-Auditorium in Berkeley from 10:00 a.m. to Noon

For more information on these upcoming events or to join the California Medicare Coalition please visit CHA's website: <http://www.cahealthadvocates.org/cmcc/events.html> or call Jasmine Gutierrez, Operations Manager at (916) 231-5110.

Keep Those Stories Coming

The adverse publicity regarding the problems that dual eligibles are facing is helping to get the changes we need at the state and federal levels. We need to keep our client stories in the press to get more permanent relief. Please help us by identifying clients or their family members who are willing and able to talk to the press, or willing to be named plaintiffs. We are particularly interested in hearing stories about language access, recent problems enrolling in 2006 plans, and initial experiences with the 2007 plans. Send stories and contacts to kprindiville@nsclc.org or arich@nsclc.org. An optional form is available at: www.nsclc.org/news/06/partd_stories2_.pdf.

You can also share stories, lodge complaints, ask questions and exchange ideas about Medicare Part D on CHA's [Medicare Part D Community Discussion](http://www.cahealthadvocates.org/partd/index.html) page on their web site at: <http://www.cahealthadvocates.org/partd/index.html>. The site is designed to benefit the Health Insurance Counseling and Advocacy Program (HICAP) network, health consumer assistance organizations, community-based agencies and other individuals who are assisting Medicare beneficiaries and their families with Part D

related problems, issues or questions. Bob Rosenblatt, the site's moderator and content developer, is a former Los Angeles Times Washington correspondent for over 26 years and currently, among other things, a columnist on health policy issues with the California HealthCare Foundation.

More information about Medicare Part D is posted on www.calmedicare.org, and on the main page and California page of the NSCLC website, which you can view at <http://www.nsclc.org/areas/medicare-part-d>. We will continually post new training materials as this program develops. Other helpful websites: Center for Medicare Advocacy at www.medicareadvocacy.org; Health Consumer Alliance at www.healthconsumer.org; Families USA at www.familiesusa.org; Medicare Rights Center at www.medicarerights.org; California Health Advocates at www.cahealthadvocates.org; California HealthCare Foundation at www.chcf.org/topics/healthinsurance/drugbenefit; Health Assistance Partnership at www.healthassistancepartnership.org; and Kaiser Family Foundation at www.kff.org/medicare.

For more information, call or e-mail NSCLC or CHA:

California Health Advocates

David Lipschutz
dlipschutz@cahealthadvocates.org
(213) 381-3670

National Senior Citizens Law Center

Jeanne Finberg, (510) 663-1055
Katharine Hsiao - khsiao@nsclc.org
Georgia Burke - gburke@nsclc.org
Kevin Prindiville - kprindiville@nsclc.org
Anna Rich - arich@nsclc.org

This Alert is provided by California Health Advocates in partnership with National Senior Citizens Law Center with support from The California Endowment