

tial coverage limit under section 1395w-102(b)(3) of this title during the year and the out-of-pocket threshold specified in section 1395w-102(b)(4)(B) of this title”.

STUDY ON EMPLOYMENT-BASED RETIREE HEALTH COVERAGE

Pub. L. 108-173, title I, § 111, Dec. 8, 2003, 117 Stat. 2174, provided that:

“(a) STUDY.—The Comptroller General of the United States shall conduct an initial and final study under this subsection [probably should be this section] to examine trends in employment-based retiree health coverage (as defined in [sic] 1860D-22(c)(1) of the Social Security Act [42 U.S.C. 1395w-132(c)(1)], as added by section 101), including coverage under the Federal Employees Health Benefits Program (FEHBP), and the options and incentives available under this Act [see Tables for classification] which may have an effect on the voluntary provision of such coverage.

“(b) CONTENT OF INITIAL STUDY.—The initial study under this section shall consider the following:

“(1) Trends in employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003].

“(2) The opinions of sponsors of employment-based retiree health coverage concerning which of the options available under this Act [see Tables for classification] they are most likely to utilize for the provision of health coverage to their medicare-eligible retirees, including an assessment of the administrative burdens associated with the available options.

“(3) The likelihood of sponsors of employment-based retiree health coverage to maintain or adjust their levels of retiree health benefits beyond coordination with medicare, including for prescription drug coverage, provided to medicare-eligible retirees after the date of the enactment of this Act.

“(4) The factors that sponsors of employment-based retiree health coverage expect to consider in making decisions about any changes they may make in the health coverage provided to medicare-eligible retirees.

“(5) Whether the prescription drug plan options available, or the health plan options available under the Medicare Advantage program, are likely to cause employers and other entities that did not provide health coverage to retirees prior to the date of the enactment of this Act to provide supplemental coverage or contributions toward premium expenses for medicare-eligible retirees who may enroll in such options in the future.

“(c) CONTENTS OF FINAL STUDY.—The final study under this section shall consider the following:

“(1) Changes in the trends in employment-based retiree health coverage since the completion of the initial study by the Comptroller General.

“(2) Factors contributing to any changes in coverage levels.

“(3) The number and characteristics of sponsors of employment-based retiree health coverage who receive the special subsidy payments under section 1860D-22 of the Social Security Act [42 U.S.C. 1395w-132], as added by section 101, for the provision of prescription drug coverage to their medicare-eligible retirees that is the same or greater actuarial value as the prescription drug coverage available to other medicare beneficiaries without employment-based retiree health coverage.

“(4) The extent to which sponsors of employment-based retiree health coverage provide supplemental health coverage or contribute to the premiums for medicare-eligible retirees who enroll in a prescription drug plan or an MA-PD plan.

“(5) Other coverage options, including tax-preferred retirement or health savings accounts, consumer-directed health plans, or other vehicles that sponsors of employment-based retiree health coverage believe would assist retirees with their future health care needs and their willingness to sponsor such alternative plan designs.

“(6) The extent to which employers or other entities that did not provide employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003] provided some form of coverage or financial assistance for retiree health care needs after the date of the enactment of this Act.

“(7) Recommendations by employers, benefits experts, academics, and others on ways that the voluntary provision of employment-based retiree health coverage may be improved and expanded.

“(d) REPORTS.—The Comptroller General shall submit a report to Congress on—

“(1) the initial study under subsection (b) not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]; and

“(2) the final study under subsection (c) not later than January 1, 2007.

“(e) CONSULTATION.—The Comptroller General shall consult with sponsors of employment-based retiree health coverage, benefits experts, human resources professionals, employee benefits consultants, and academics with experience in health benefits and survey research in the development and design of the initial and final studies under this section.”

**§ 1395w-133. State Pharmaceutical Assistance Programs**

**(a) Requirements for benefit coordination**

**(1) In general**

Before July 1, 2005, the Secretary shall establish consistent with this section requirements for prescription drug plans to ensure the effective coordination between a part D plan (as defined in paragraph (5)) and a State Pharmaceutical Assistance Program (as defined in subsection (b)) with respect to—

(A) payment of premiums and coverage; and

(B) payment for supplemental prescription drug benefits,

for part D eligible individuals enrolled under both types of plans.

**(2) Coordination elements**

The requirements under paragraph (1) shall include requirements relating to coordination of each of the following:

(A) Enrollment file sharing.

(B) The processing of claims, including electronic processing.

(C) Claims payment.

(D) Claims reconciliation reports.

(E) Application of the protection against high out-of-pocket expenditures under section 1395w-102(b)(4) of this title.

(F) Other administrative processes specified by the Secretary.

Such requirements shall be consistent with applicable law to safeguard the privacy of any individually identifiable beneficiary information.

**(3) Use of lump sum per capita method**

Such requirements shall include a method for the application by a part D plan of specified funding amounts from a State Pharmaceutical Assistance Program for enrolled individuals for supplemental prescription drug benefits.

**(4) Consultation**

In establishing requirements under this subsection, the Secretary shall consult with State

Pharmaceutical Assistance Programs, MA organizations, States, pharmaceutical benefit managers, employers, representatives of part D eligible individuals, the data processing experts, pharmacists, pharmaceutical manufacturers, and other experts.

**(5) Part D plan defined**

For purposes of this section and section 1395w-134 of this title, the term “part D plan” means a prescription drug plan and an MA-PD plan.

**(b) State Pharmaceutical Assistance Program**

For purposes of this part, the term “State Pharmaceutical Assistance Program” means a State program—

(1) which provides financial assistance for the purchase or provision of supplemental prescription drug coverage or benefits on behalf of part D eligible individuals;

(2) which, in determining eligibility and the amount of assistance to part D eligible individuals under the Program, 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; and

(3) which satisfies the requirements of subsections (a) and (c).

**(c) Relation to other provisions**

**(1) Medicare as primary payor**

The requirements of this section shall not change or affect the primary payor status of a part D plan.

**(2) Use of a single card**

A card that is issued under section 1395w-104(b)(2)(A) of this title for use under 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.

**(3) Other provisions**

The provisions of section 1395w-134(c) of this title shall apply to the requirements under this section.

**(4) Special treatment under out-of-pocket rule**

In applying section 1395w-102(b)(4)(C)(ii) of this title, expenses incurred under a State Pharmaceutical Assistance Program may be counted toward the annual out-of-pocket threshold.

**(5) Construction**

Nothing in this section shall be construed as requiring a State Pharmaceutical Assistance Program to coordinate or provide financial assistance with respect to any part D plan.

**(d) Facilitation of transition and coordination with State Pharmaceutical Assistance Programs**

**(1) Transitional grant program**

The Secretary shall provide payments to State Pharmaceutical Assistance Programs with an application approved under this subsection.

**(2) Use of funds**

Payments under this section may be used by a Program for any of the following:

(A) Educating part D eligible individuals enrolled in the Program about the prescription drug coverage available through part D plans under this part.

(B) Providing technical assistance, phone support, and counseling for such enrollees to facilitate selection and enrollment in such plans.

(C) Other activities designed to promote the effective coordination of enrollment, coverage, and payment between such Program and such plans.

**(3) Allocation of funds**

Of the amount appropriated to carry out this subsection for a fiscal year, the Secretary shall allocate payments among Programs that have applications approved under paragraph (4) for such fiscal year in proportion to the number of enrollees enrolled in each such Program as of October 1, 2003.

**(4) Application**

No payments may be made under this subsection except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary.

**(5) Funding**

Out of any funds in the Treasury not otherwise appropriated, there are appropriated for each of fiscal years 2005 and 2006, \$62,500,000 to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-23, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2128.)

**§ 1395w-134. Coordination requirements for plans providing prescription drug coverage**

**(a) Application of benefit coordination requirements to additional plans**

**(1) In general**

The Secretary shall apply the coordination requirements established under section 1395w-133(a) of this title to Rx plans described in subsection (b) in the same manner as such requirements apply to a State Pharmaceutical Assistance Program.

**(2) Application to treatment of certain out-of-pocket expenditures**

To the extent specified by the Secretary, the requirements referred to in paragraph (1) shall apply to procedures established under section 1395w-102(b)(4)(D) of this title.

**(3) User fees**

**(A) In general**

The Secretary may impose user fees for the transmittal of information necessary for benefit coordination under section 1395w-102(b)(4)(D) of this title in a manner similar to the manner in which user fees are imposed under section 1395u(h)(3)(B) of this title, except that the Secretary may retain a portion of such fees to defray the Secretary's costs in carrying out procedures under section 1395w-102(b)(4)(D) of this title.

**(B) Application**

A user fee may not be imposed under subparagraph (A) with respect to a State Pharmaceutical Assistance Program.