

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.

**(b) Rx Plan**

An Rx plan described in this subsection is any of the following:

**(1) Medicaid programs**

A State plan under subchapter XIX, including such a plan operating under a waiver under section 1315 of this title, if it meets the requirements of section 1395w-133(b)(2) of this title.

**(2) Group health plans**

An employer group health plan.

**(3) FEHBP**

The Federal employees health benefits plan under chapter 89 of title 5.

**(4) Military coverage (including TRICARE)**

Coverage under chapter 55 of title 10.

**(5) Other prescription drug coverage**

Such other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of part D eligible individuals as the Secretary may specify.

**(c) Relation to other provisions****(1) Use of cost management tools**

The requirements of this section shall not impair or prevent a PDP sponsor or MA organization from applying cost management tools (including differential payments) under all methods of operation.

**(2) No affect<sup>1</sup> on treatment of certain out-of-pocket expenditures**

The requirements of this section shall not affect the application of the procedures established under section 1395w-102(b)(4)(D) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-24, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2130.)

SUBPART 4—MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE PROGRAM

**§ 1395w-141. Medicare prescription drug discount card and transitional assistance program**

**(a) Establishment of program****(1) In general**

The Secretary shall establish a program under this section—

(A) to endorse prescription drug discount card programs that meet the requirements of this section in order to provide access to prescription drug discounts through prescription drug card sponsors for discount card eligible individuals throughout the United States; and

(B) to provide for transitional assistance for transitional assistance eligible individuals enrolled in such endorsed programs.

**(2) Period of operation****(A) Implementation deadline**

The Secretary shall implement the program under this section so that discount

cards and transitional assistance are first available by not later than 6 months after December 8, 2003.

**(B) Expediting implementation**

The Secretary shall promulgate regulations to carry out the program under this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

**(C) Termination and transition****(i) In general**

Subject to clause (ii)—

(I) the program under this section shall not apply to covered discount card drugs dispensed after December 31, 2005; and

(II) transitional assistance shall be available after such date to the extent the assistance relates to drugs dispensed on or before such date.

**(ii) Transition**

In the case of an individual who is enrolled in an endorsed discount card program as of December 31, 2005, during the individual's transition period (if any) under clause (iii), in accordance with transition rules specified by the Secretary—

(I) such endorsed program may continue to apply to covered discount card drugs dispensed to the individual under the program during such transition period;

(II) no annual enrollment fee shall be applicable during the transition period;

(III) during such period the individual may not change the endorsed program plan in which the individual is enrolled; and

(IV) the balance of any transitional assistance remaining on January 1, 2006, shall remain available for drugs dispensed during the individual's transition period.

**(iii) Transition period**

The transition period under this clause for an individual is the period beginning on January 1, 2006, and ending in the case of an individual who—

(I) is enrolled in a prescription drug plan or an MA-PD plan before the last date of the initial enrollment period under section 1395w-101(b)(2)(A) of this title, on the effective date of the individual's coverage under such part; or

(II) is not so enrolled, on the last day of such initial period.

**(3) Voluntary nature of program**

Nothing in this section shall be construed as requiring a discount card eligible individual to enroll in an endorsed discount card program under this section.

<sup>1</sup> So in original. Probably should be "effect".