

medicaid and the uninsured

April 2004

The Medicare Prescription Drug Discount Card Program: Implications for Low-income Medicare Beneficiaries

Beginning in May of 2004, Medicare will offer the option to purchase a prescription drug discount card to most of its 41 million beneficiaries. The cards, which are to be issued beginning in June, will be offered by private “sponsors” endorsed by the Medicare program. Medicare will also subsidize the purchase of prescription drugs with a \$600 per year subsidy for low-income Medicare beneficiaries whose prescription drugs are not already covered by Medicaid or another insurance plan. The Centers for Medicare & Medicaid Services (CMS) estimates that between 7.3 and 7.4 million beneficiaries will enroll in the discount card program, and that 4.7 million of those beneficiaries will also receive low-income assistance at a cost to the federal government of \$5.0 billion.¹ The discount card and low-income assistance programs will expire on December 31, 2005, immediately prior to implementation of the new Medicare Part D prescription drug benefit. This Issue Paper describes the discount card and low-income assistance programs and discusses their implications for low-income Medicare beneficiaries and state Medicaid programs.

Discount Card Program

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) directs the Secretary of Health and Human Services (HHS) to establish a prescription drug discount card program for certain Medicare beneficiaries.² The program is voluntary; eligible beneficiaries are not required to enroll. Enrollment in the discount card program is open to all Medicare beneficiaries other than those who have prescription drug coverage under Medicaid. (In 2002, about 6.1 million aged and disabled Medicare beneficiaries, or about 14 percent of all Medicare beneficiaries that year, had Medicaid drug coverage as “full duals.”)³ Medicare beneficiaries who have prescription drug discount cards that are not endorsed by Medicare may enroll in the Medicare-endorsed program if they wish (and they may retain their other cards), but, as a general rule, they may not enroll in more than one Medicare-endorsed discount card program each year. CMS estimates that about 7.3 million Medicare beneficiaries will enroll in Medicare-endorsed prescription drug discount card programs in 2004, and 7.4 million will do so in 2005.⁴

For those who choose to enroll, the discount card program is intended to offer access to discounted prices for prescription drugs purchased at retail or chain pharmacies as well as from mail-order pharmacies. The cards will carry the logo “Medicare Approved,” as well as a disclaimer that “This is not a Medicare insurance

card.” As the disclaimer indicates, the discount card will not provide actual coverage for the costs of prescription drugs. Some low-income Medicare beneficiaries will qualify for a \$600 per year subsidy described below to help pay for drugs through the discount card program. But, those beneficiaries who do not qualify for this “Transitional Assistance” will receive only price discounts.

The specific price discounts or “negotiated prices” are not specified in the Medicare law. They will be the prices that the private companies or “sponsors” offering the Medicare-endorsed discount cards are able to negotiate with pharmacy manufacturers, with dispensing pharmacies, or with both. The expectation is that endorsement of the cards by Medicare will encourage millions of Medicare beneficiaries to enroll, giving the sponsors of the cards the leverage associated with high-volume purchasing.⁵ It is believed that this leverage will enable discount card sponsors to extract price concessions from manufacturers, from pharmacies, or from both.⁶ Nothing in the Medicare law prevents manufacturers from raising the prices against which discounts are calculated.

There are no statutory or regulatory standards as to how the Medicare-endorsed “negotiated prices” should compare with the prices generally available at local pharmacies to Medicare beneficiaries who do not have discount cards or who have other discount cards not endorsed by Medicare. Nor are there standards regarding the particular drugs or classes of drugs to which these “negotiated prices” should apply. The statute requires only that the prices “take into account” discounts, rebates, or other price concessions that the companies offering the cards are able to negotiate and that they include pharmacists’ dispensing fees. The statute does not require that the entire discount obtained by the company sponsoring the discount card be passed through to the enrollee.⁷ Discount card enrollees may not, however, be charged more than the lower of (1) the “negotiated price” or (2) the “usual and customary price.”⁸ The Administration estimates that the cards will enable beneficiaries to realize savings of “about 10 to 15 percent on their total drug costs, with savings of up to 25 percent or more on individual prescriptions.”⁹

Under the CMS implementing regulations, the sponsor of a discount card may limit the drugs for which it offers negotiated prices to a specific list, or formulary, that it establishes. There is no minimum federal standard with which a sponsor’s formulary must comply. However, sponsors using a formulary must offer a “negotiated price” on at least one covered drug “in each of the lowest level categories for each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries.”¹⁰ Whether or not a sponsor uses a formulary, it must offer a “negotiated price” on a generic drug in at least 55 percent of the lowest level categories in each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries.¹¹

The Medicare discount card program will not offer cards directly through CMS, which administers the Medicare program. Instead, the Medicare drug discount card may be offered only by nongovernmental entities, known as “sponsors,” with which the

Secretary contracts for this purpose. (In 2001, five states sponsored prescription drug discount card programs for Medicare beneficiaries; these states will not be able to qualify for Medicare endorsement.)¹² By regulation, the Secretary has stipulated that sponsors must, among other things, have three years of private sector experience in the U.S. in pharmacy benefits management and, at the time of application, operate a pharmacy benefit, discount card, or similar program that serves at least 1 million covered lives.¹³ By regulation, the Secretary has also required that the sponsor (and any subcontractors) maintain a “satisfactory” record of “financial stability and business integrity” during the term of the discount card program.¹⁴ As indicated by the allegations in the complaint filed by the Department of Justice against Medco Health Solutions, a large pharmacy benefits manager (PMB), concerns about business stability and integrity may be well-founded.¹⁵

To ensure a choice among different discount cards, the statute requires the Secretary to contract with at least two discount card sponsors in each state. The enrollment areas for a sponsor’s discount card program must include the entire state, and the program must be available to all eligible individuals within the state.¹⁶ An approved sponsor may operate Medicare-endorsed discount drug card programs in more than one state. There is an exception to the statewide enrollment requirement in the case of Medicare managed care organizations that offer an “exclusive card” that limits enrollment to Medicare beneficiaries enrolled in the managed care plan.¹⁷ As of February 5, 2004, CMS had received 106 applications from nongovernmental entities for approval as sponsors or exclusive card sponsors.¹⁸ On March 25, 2004, CMS announced the selection of 28 general card sponsors and 43 exclusive card sponsors.¹⁹

Discount card programs may use mail-order pharmacies, but they must also provide enrolled beneficiaries “convenient access” to neighborhood retail pharmacies. By regulation, the Secretary has defined “convenient access” to mean that, in urban areas, at least 90 percent of Medicare beneficiaries enrolled in the sponsor’s program live within 2 miles of a contracted network pharmacy, and in rural areas, at least 70 percent of enrolled Medicare beneficiaries live within 15 miles of a network pharmacy.²⁰

Sponsors may charge an annual enrollment fee of up to \$30. The fee, if any, must be uniform for all eligible individuals residing in the state. The sponsor, not the Medicare program, is responsible for collecting any fee imposed. The sponsor, and any pharmacy contracting with the sponsor, may not impose any charges on an enrollee other than the enrollment fee and the “negotiated price” for the covered drug. The pharmacist’s dispensing fee must be included in the “negotiated price” paid by the enrollee. (In the case of low-income beneficiaries receiving subsidies described below, the pharmacist may also collect the specified coinsurance amount.) The Secretary is not authorized to pay any administrative expenses incurred by contracting discount card sponsors. States may, at their option, use their own funds to pay some or all of the annual enrollment fees for eligible beneficiaries who are not enrolled in Medicaid and who do not qualify for the Transitional Assistance program for low-income beneficiaries.

How will Medicare beneficiaries know what discount card choices are available to them in their state? Under the CMS regulations, the primary source of information will be the sponsors, which are required to provide specified information about their discount card programs through both the internet and “some other tangible medium (such as a mailing).” The information required includes (1) the annual enrollment fee (if any) and (2) the negotiated prices offered for drugs covered by the discount card.²¹ Information and outreach materials are subject to review and approval by CMS; materials are deemed to be approved if they are not disapproved within 30 days of submission.²² Other potential sources of information include Social Security Administration District Offices, State Health Insurance Programs (SHIPs), and Area Agencies on Aging.²³

CMS will expand the capacity of its toll-free 1-800 MEDICARE “helpline” to answer beneficiary questions about the discount card program. In addition, for those beneficiaries (or their families) who have access to and facility with the internet, CMS will operate a “Price Compare” website in the Prescription Drug and Other Assistance Programs section of www.medicare.gov. The site will display each sponsor’s maximum price at the pharmacy level for each drug covered under that sponsor’s discount card program in a state.²⁴ CMS anticipates this database will be accessible as of April 29, 2004. A discount card sponsor is permitted to change its “negotiated price” on any drug it covers once per week.²⁵ According to a Kaiser Family Foundation survey, only about 21 percent of the elderly have access to the internet and 3 percent have used the CMS Medicare website.²⁶

Transitional Assistance Program for Low-income Beneficiaries

The MMA establishes a “Transitional Assistance” program of subsidies for low-income Medicare beneficiaries who are not receiving prescription drug coverage through Medicaid or another insurance plan. Like the drug discount card program, the low-income assistance program is temporary. It begins in June 2004 and expires on December 31, 2005; implementation of the new Medicare prescription drug benefit is scheduled for January 1, 2006. The amount of assistance to which each eligible beneficiary is entitled is \$600 in each calendar year; funds unused during 2004 can be rolled over into 2005.²⁷ These funds may be used to pay the cost of prescription drugs covered through the card. In addition, the Medicare program will pay the annual enrollment fee, if any, charged by a discount card program in which a beneficiary who qualifies for Transitional Assistance enrolls. CMS estimates that of the 7.3 to 7.4 million beneficiaries who will enroll in a discount card program, 4.7 million will receive Transitional Assistance, at a cost to the federal government of about \$5.0 billion over the course of the program.²⁸

The Medicare Prescription Drug Discount Card: Key Facts on the Transitional Assistance Program for Low-income Beneficiaries

The Medicare Prescription Drug Discount Card program is intended to provide discounts on the prices of drugs purchased by Medicare beneficiaries who choose to enroll. Beginning in June 2004, private “sponsors” will issue cards endorsed by the Medicare program that give enrollees access to discounted prices negotiated by the sponsors with pharmacy manufacturers and/or dispensing pharmacies. Almost all Medicare beneficiaries, regardless of income, are eligible to enroll in a Medicare-endorsed discount card program, except for those who have Medicaid prescription drug coverage. Discount card sponsors may impose annual enrollment fees of up to \$30. Under the Transitional Assistance program, certain low-income Medicare beneficiaries who are not enrolled in Medicaid can have their enrollment fees paid and can receive \$600 per year toward the purchase of prescription drugs at the discounted price.

What is the Transitional Assistance program?

- The Transitional Assistance program provides \$600 per year during 2004 and 2005 toward the costs of prescription drugs and pays any annual fee for enrolling in a Medicare-endorsed discount card program.

Which Medicare beneficiaries qualify for Transitional Assistance?

- The beneficiary may not have prescription drug coverage under Medicaid or an employer-sponsored group plan, an individual health insurance policy, TRICARE, or the Federal Employee’s Health Benefits Program (FEHBP).
- The beneficiary’s income may not exceed 135 percent of the federal poverty level (\$12,568 for an individual, \$16,862 for a couple in 2004).

What cost sharing are Transitional Assistance beneficiaries required to pay?

- The \$600 annual subsidy cannot be used to cover the entire discounted cost of a drug.
- Beneficiaries with incomes at or below 100 percent of the federal poverty level (\$9,310 for an individual, \$12,490 for a couple in 2004) must pay 5 percent of the discounted cost of the drug.
- Beneficiaries with incomes between 100 and 135 percent of the federal poverty level (\$12,568 for an individual, \$16,862 for a couple in 2004) must pay 10 percent of the discounted cost of the drug.

How do qualified beneficiaries enroll in the Transitional Assistance program?

- To receive Transitional Assistance, a beneficiary must apply to enroll in a Medicare-endorsed discount card program by submitting a standard enrollment form to the program sponsor.
- CMS will verify the beneficiary’s eligibility for Transitional Assistance.

How is the Transitional Assistance Program administered?

- The Medicare program pays the \$600 subsidy to the sponsor of the discount card program in which the beneficiary chooses to enroll.
- The sponsor pays the network pharmacy 95 or 90 percent of the cost of the drug at the time the beneficiary fills a prescription, depending on the beneficiary’s income

In order to qualify for the \$600 annual subsidy and payment of any enrollment fee, a Medicare beneficiary must (1) have an income at or below 135 percent of the federal poverty level (\$12,568 per year for an individual, \$16,862 for a couple in 2004) and (2) not have prescription drug coverage under Medicaid, employer-sponsored group health insurance coverage, an individual health insurance policy, TRICARE, or the Federal Employee’s Health Benefits Program (FEHBP). There is no assets test. (This is in sharp contrast to the assets tests that apply under Medicaid and under the low-income subsidy program in connection with the Medicare Part D drug benefit.) The

\$600 annual subsidy payment is not taken into account in determining eligibility for Medicaid, Supplemental Security Income, or any other Federal program.²⁹

To qualify for Transitional Assistance, a Medicare beneficiary must first enroll in one of the discount card programs offered in his or her state. The beneficiary must then submit a standard enrollment form to the discount card program, stating his or her income, family size, and whether he or she has prescription drug coverage, and sign the form under penalty of perjury. CMS will verify the individual's certification. Individuals enrolled in Medicaid for premium or cost-sharing subsidies only – the so-called Medicare Savings Programs – are deemed to meet the income requirements and eligible for the subsidy because they do not have drug coverage through Medicaid.³⁰ These are Qualified Medicare Beneficiaries (QMBs), who have annual incomes no greater than 100 percent of the federal poverty level (\$9,310 for an individual, \$12,490 for a couple in 2004); Specified Low-Income Medicare Beneficiaries (SLIMBs), who have incomes between 100 percent and 120 percent of the poverty level (\$11,172 for an individual and \$14,988 for a couple in 2004); and Qualified Individuals (QIs), who have incomes between 120 percent and 135 percent of the poverty level (\$12,569 for an individual and \$16,862 for a couple in 2004). In all three cases, countable assets may not exceed \$4,000 for an individual and \$6,000 for a couple.

The annual \$600 subsidy is not paid directly to an eligible individual. Instead, after CMS has verified an individual's eligibility for Transitional Assistance, the funds will flow from the Medicare Part B Trust Fund directly to the approved discount card sponsors into which the eligible beneficiary has enrolled. The discount card sponsor, in turn, will apply each eligible enrollee's \$600 subsidy to the cost of prescription drugs covered by paying the network pharmacy at which the enrollee fills the prescription. The \$600 subsidy may not be applied to the cost of non-prescription or over-the-counter (OTC) drugs that the discount card program covers (if any). Discount card programs must make available to enrollees, both through a toll-free telephone number and at the point of sale through all network pharmacies, information on the amount of the \$600 subsidy that they have not used.³¹

The individual beneficiary remains responsible for a portion of the cost of the covered drug, depending on income. In the case of a beneficiary with income at or below the federal poverty level (\$9,310 per year for an individual, \$12,490 for a couple in 2004), the subsidy funds can pay 95 percent of the price of the covered drug. In the case of a beneficiary with an income above 100 percent but not greater than 135 percent of the federal poverty level (\$12,568 for an individual, \$16,862 for a couple in 2004), the subsidy funds can pay 90 percent of the price of the drug. The regulations do not define the term "price" of the covered drug for this purpose, but the statute specifies that the costs incurred for covered drugs must "take into account" the "negotiated price" (if any) for the drug.³²

The beneficiary is responsible for the remaining 5 percent or 10 percent coinsurance amount.³³ However, states may, at their option, use their own funds to pay some or all of the coinsurance, so long as these payments are made directly to the pharmacy. In addition, a pharmacy may reduce or waive the 5 or 10 percent coinsurance altogether if (1) the waiver is not offered as part of an advertisement, (2)

the pharmacy does not routinely waive the coinsurance, and (3) the pharmacy has determined in good faith that the individual is in financial need or has failed to collect the coinsurance after making reasonable efforts to do so.³⁴

Note that the eligibility requirements for Transitional Assistance apply only at the time a Medicare beneficiary applies to enroll in a discount card program and applies for Transitional Assistance.³⁵ If, after enrolling in a discount card program and qualifying for Transitional Assistance, a low-income beneficiary becomes eligible for and enrolls in Medicaid, the beneficiary is not disqualified from Transitional Assistance. Once enrolled and qualified, a beneficiary remains eligible for Transitional Assistance through December 31, 2005, or until the beneficiary chooses to disenroll.³⁶

Implications for Low-income Medicare Beneficiaries

For the majority of low-income Medicare beneficiaries – the 6.1 million or so who receive prescription drug coverage through Medicaid – the Medicare discount drug and Transitional Assistance programs will be of no benefit because they will keep the coverage they currently have. However, for those who do not have Medicaid prescription drug coverage, the discount card offers the possibility of significant price discounts on prescription drugs. Additionally, there are nearly 12 million Medicare beneficiaries not residing in institutions who have incomes at or below 135 percent of the federal poverty level (\$12,568 for an individual, \$16,862 for a couple in 2004).³⁷ Those who do not have prescription drug coverage through Medicaid or another insurance plan also could benefit from the Transitional Assistance program, which could provide (1) up to \$60 in annual enrollment fee subsidies and (2) up to \$1,200 over one year and a half towards the purchase of drugs. If CMS estimates that 4.7 million Medicare beneficiaries will qualify for Transitional Assistance are correct, the Medicare program could pay out over \$5.0 billion over the next two years in enrollment fee and annual subsidies.

The implications of the Medicare discount card for a low-income Medicare beneficiary depend, in part, on the state in which he or she resides. As of February 2004, 29 states were operating State Pharmacy Assistance Programs (SPAPs). Of these, 22 states provided subsidies for some or all of the cost of covered prescription drugs, 4 states offered both subsidy and discount programs, and 7 states provided price discounts only.³⁸ Four states are operating their SPAPs under a Medicaid section 1115 “Pharmacy Plus” waiver.³⁹ The Medicare statute does not prohibit Medicare beneficiaries who enroll in the Medicare-endorsed discount card program from also enrolling in an SPAP.

In a state without an SPAP, the Medicare discount card is the only public option for discounts on prescription drug prices. In states with SPAPs, the potential benefit will depend on the size of the state program discounts and how they compare to those available under the Medicare drug discount program. In states with SPAPs that include purchasing subsidies, the potential advantage of the Medicare drug discount program will depend on how the SPAP subsidy compares to the Transitional Assistance payment. The potential benefit will also depend upon whether states continue to operate their SPAPs when the Medicare discount card and Transitional Assistance

programs are launched in June. One state (South Dakota) has enacted legislation terminating its state-run discount card program within 120 days after the issuance of the Medicare-endorsed discount card.⁴⁰ Two other states (Maine and Wyoming) have taken a different approach, enacting legislation requiring eligible Medicare beneficiaries to use the Medicare-endorsed discount card before using the state card.⁴¹

Regardless of the state in which a low-income beneficiary lives, the process of enrolling in the Transitional Assistance program has the potential to be non-intrusive and beneficiary-friendly. This is because enrollment in the Transitional Assistance program will occur through the program “sponsor” rather than a state or county welfare office, because qualifying for Transitional Assistance does not depend upon meeting an assets test, and because the beneficiary may apply for Transitional Assistance through a standard enrollment form that can be made simple. Of course, beneficiaries must still be educated about the existence of the discount card and must decide to enroll in a Medicare-endorsed card program to be able to access the \$600 annual subsidy.

The marketing and outreach efforts that are undertaken by sponsors and CMS in connection with the discount card have the potential to link low-income Medicare beneficiaries into other assistance programs, including the so-called “Medicare Savings Programs” (e.g., QMB, SLIMB, and QI) that subsidize Medicare Part B premiums and, in some cases, deductible and coinsurance requirements.⁴² As Dorothy Rosenbaum has pointed out, the Food Stamp program currently serves only about 30 percent of the elderly who are eligible for its benefits and only about 50 percent of the eligible adults with disabilities. Many of these low-income elderly individuals, if enrolled in Food Stamps, would receive a benefit of more than \$50 per month – more than the \$600 annual Transitional Assistance subsidy.⁴³ If the discount drug outreach efforts were also to include information about Food Stamps and other programs designed to assist low-income beneficiaries, participation in these other programs could improve.

Implications for States

The implications of the Medicare discount card program for states are far less significant than those of the Medicare Part D drug benefit.⁴⁴ With one exception, states have no administrative responsibilities with respect to the marketing of the Medicare discount card program, the enrollment of low-income beneficiaries in Transitional Assistance, or the administration of the \$600 annual subsidies. The exception is that, on a monthly basis, states must provide CMS data needed by the Medicare program to verify beneficiary eligibility for Transitional Assistance.⁴⁵ In fact, even if a state wants to assume programmatic responsibilities it cannot do so because the new Medicare law prohibits states and other public entities from becoming sponsors of the Medicare-endorsed discount card programs.

Although they cannot operate a Medicare-endorsed discount card program, states can continue to offer their own discount card programs. If they do so, Medicare beneficiaries may enroll in both the state-run discount card program and one of the Medicare-endorsed discount card programs offered in the state (the cards may offer different discounts on different drugs). Those beneficiaries who are eligible for Transitional Assistance – e.g., those without drug benefits through Medicaid or another

insurance plan with incomes at or below 135 percent of the federal poverty level (\$12,568 for an individual and \$16,862 for a couple in 2004) – may receive the \$600 per year annual purchasing subsidy while also receiving discounts through both the Medicare-endorsed and state cards. These Transitional Assistance beneficiaries are also eligible for payment of the \$30 fee (if any) for enrolling in a Medicare-endorsed card program. States may use their own funds to pay any annual enrollment fees imposed by Medicare-endorsed cards on behalf of beneficiaries who are not eligible for Transitional Assistance.⁴⁶

States cannot operate the Transitional Assistance program (this is done by Medicare and the discount card sponsors; states cannot be sponsors). However, a state that operates its own subsidy program can “wrap around” the \$600 federal subsidy. New Jersey, for example, estimates that 81,000 of its 190,000 Pharmaceutical Assistance to the Aged & Disabled (PAAD) program enrollees will qualify for the \$600 in Transitional Assistance; if those who are eligible use this subsidy before they use their PAAD benefits, the state estimates it will save \$90 million.⁴⁷ Similarly, a state can use its own funds to pay network pharmacies for all or part of the 5 or 10 percent coinsurance owed by Transitional Assistance beneficiaries.⁴⁸

Conclusion

Over the next year and a half, the Medicare program will launch, operate, and then close down a national discount card program in which 7.4 million beneficiaries are expected to enroll. Of those expected to enroll, the majority – over three fifths – are expected to have incomes at or below 135 percent of the federal poverty level (\$12,568 for an individual and \$16,862 for a couple), thereby qualifying them for an annual subsidy of \$600 and payment of any annual enrollment fee. Under these estimates, Medicare could pay out over \$5.0 billion to discount drug card sponsors in enrollment fees and Transitional Assistance subsidies. The challenge of launching, operating, and terminating a program of this scope in such a short time period is formidable.

While CMS is implementing the discount card program, it also will be preparing to launch outpatient prescription drug coverage for 41 million Medicare beneficiaries the day after the discount card program ends. The operational challenges of implementing drug coverage are far greater than those of a discount card program, and the transition from one program to the next is not likely to be seamless. One significant discontinuity relates to eligibility rules for assistance for low-income people. The discount card program considers only a beneficiary’s income when determining eligibility for Transitional Assistance. The new Medicare Part D program, in contrast, bases eligibility for its low-income subsidy on both income and assets.⁴⁹ All low-income Medicare beneficiaries who qualify for Transitional Assistance under the discount card will also qualify for the low-income premium and cost-sharing subsidy under Part D if their income remains below 135 percent of the federal poverty level. However, many of these individuals will not receive these subsidies, either because the assets test under Part D deters them from applying or because it disqualifies them from receiving assistance. This discontinuity is likely to be the source of considerable confusion and administrative burden to low-income beneficiaries.

This issue paper was prepared by Andy Schneider, Principal, Medicaid Policy, LLC.

CITATIONS

- ¹ CMS, “Overview: Medicare Prescription Drug Discount Card and Transitional Assistance Program” (December 10, 2003), www.cms.hhs.gov/discountdrugs/overview.asp.
- ² Section 1860D-31 of the Social Security Act, as enacted by section 101 of P.L. 108-173.
- ³ Kaiser Commission on Medicaid and the Uninsured, *Implications of the New Medicare Law for Dual Eligibles: 10 Key Questions and Answers* (January 9, 2004), Table 1, www.kff.org.
- ⁴ CMS, “Overview: Medicare Prescription Drug Discount Card and Transitional Assistance Program” (December 10, 2003), www.cms.hhs.gov/discountdrugs/overview.asp.
- ⁵ A 2001 study of discount cards for the Kaiser Family Foundation concluded: “The most obvious sources of profits [for drug discount card program sponsors] are enrollment fees (if any) and rebates from pharmaceutical manufacturers. Rebates are based on manufacturers’ desire to increase market share for their products and the ability of card programs to promote or reward the purchase of preferred products with deeper discounts. While rebates flow to the card sponsor, there is considerable variation in the degree to which the rebates are passed through to the consumer in the form of lower prices or retained by the sponsor.” Health Policy Alternatives, *Prescription Drug Discount Cards: Current Programs and Issues* (February 2002), p. 24, www.kff.org.
- ⁶ To encourage manufacturers of brand-name drugs to negotiate favorable prices with Medicare-endorsed discount card sponsors, the MMA exempts manufacturers from the requirement to report “negotiated prices” to CMS for purposes of determining the “best price” in calculating the amount of the Medicaid rebate. Section 1860D-31(e)(1)(D) of the Social Security Act. With respect to pharmacies, the statute requires that the pharmacy network of each endorsed sponsor have a “sufficient” number of pharmacies that dispense drugs other than by mail-order and that enrollees have “convenient access” to “negotiated prices.” The statute also specifies that “negotiated prices” made available to enrollees include any dispensing fees. However, the statute does not specify what the amount of the dispensing fee should be; that is a matter for negotiation between the pharmacy and sponsor. Section 1860D-31(e)(1)(A)(ii), (B) of the Social Security Act.
- ⁷ CMS implementing regulations explicitly allow discount card sponsors to pass “a share” of price concessions obtained from manufacturers to enrollees through “negotiated prices,” 42 CFR 403.806(d)(6), 68 Fed. Reg. at 69918 (December 15, 2003).
- ⁸ Section 1860D-31(h)(8).
- ⁹ CMS Press Release, “HHS Announces Immediate Steps to Make Medicare-Approved Drug Discount Card Programs Available Next Spring,” (December 10, 2003), www.cms.hhs.gov/medicare.
- ¹⁰ 42 CFR 403.806(d)(2), 68 Fed. Reg. at 69918 (December 15, 2003).
- ¹¹ 42 CFR 403.806(d)(3), 68 Fed. Reg. at 69918 (December 15, 2003).
- ¹² California, Florida, Iowa, New Hampshire, and West Virginia. Health Policy Alternatives, op. cit., Appendix 3.
- ¹³ 42 CFR 403.806 (a), 68 Fed. Reg. at 69917 (December 15, 2003).
- ¹⁴ 42 CFR 403.806 (b), 68 Fed. Reg. at 69918 (December 15, 2003).
- ¹⁵ www.usdoj.gov/usao/pae.
- ¹⁶ 42 CFR 403.806(f)(1) and (2), 68 Fed. Reg. at 69918 (December 15, 2003).
- ¹⁷ 42 CFR 403.814(b)(3)(ii), 68 Fed. Reg. at 69923 (December 15, 2003).
- ¹⁸ CMS Press Release, “Medicare Reports High Response by Companies to Sponsor Approved Drug Discount Cards” (February 5, 2005), www.cms.hhs.gov/medicare.
- ¹⁹ CMS Press Release, “HHS Gives Seal of Approval to Medicare Drug Discount Cards” (March 25, 2004), <http://www.cms.hhs.gov/media/press/release.asp?Counter=988>.
- ²⁰ 42 CFR 406.803(f)(3), 68 Fed. Reg. at 69918 (December 15, 2003).
- ²¹ 42 CFR 403.806(g)(1), 68 Fed. Reg. at 69919 (December 15, 2003).
- ²² 42 CFR 403.806(f)(5)(iii), 68 Fed. Reg. at 69919 (December 13, 2003).
- ²³ J. Goon, CMS, “Medicare Prescription Drug Implementation” (March 21, 2004).
- ²⁴ 42 CFR 403.806(h)(4), 68 Fed. Reg. at 69919 (December 15, 2003); CMS Press Release (December 10, 2003), www.cms.hhs.gov/medicare.
- ²⁵ Any increase in a drug’s “negotiated price” may not exceed an amount proportionate to the change in the drug’s average wholesale price (AWP) or changes in the sponsor’s cost structure, 42 CFR 403.806(d)(9), 68 Fed. Reg. at 69918 (December 15, 2003). If the increase in the “negotiated price” is due to reasons other than a change in the AWP, the sponsor must provide notice of the increase and a rationale for it. 42 CFR 403.806(i)(2) at 68 Fed. Reg. 69919 (December 15, 2003).

²⁶E. Goldstein et al., "Lessons Learned from the National Medicare & You Education Program," *Health Care Financing Review* (Fall 2001), www.cms.hhs.gov/review/01fall/default.asp, found that 21 percent of Medicare beneficiaries have Internet access and 3 percent use it to seek Medicare information.

²⁷Section 1860D-31(g)(1) of the Social Security Act, 42 CFR 403.808(f), 68 Fed. Reg. at 69920 (December 15, 2003). Individuals enrolling during 2004 are eligible for the entire \$600 subsidy. Individuals enrolling during 2005 are eligible for the full \$600 subsidy only if they apply prior to April 1, 2005; thereafter, their subsidy is reduced (\$450 if prior to July 1, \$300 if prior to October 1, and \$150 if prior to December 31). 42 CFR 403.808(b), 68 Fed. Reg. at 69920 (December 15, 2003).

²⁸CMS, "Overview: Medicare Prescription Drug Discount Card and Transitional Assistance Program" (December 10, 2003), www.cms.hhs.gov/discountdrugs/overview.asp.

²⁹42 CFR 403.810(d), 68 Fed. Reg. at 66920 (December 15, 2003).

³⁰42 CFR 403.810(c), 68 Fed. Reg. at 66920 (December 15, 2003).

³¹42 CFR 403.806(e)(4), (5), 68 Fed. Reg. at 69918 (December 15, 2003).

³²Section 1860D-31(g)(1)(B).

³³42 CFR 403.808(d)(2), 68 Fed. Reg. at 66920 (December 15, 2003).

³⁴Sections 1860D-31(g)(4), 1128B(b)(3)(G), and 1128A(i)(6)(A) of the Social Security Act.

³⁵42 CFR 403.810(a)(2), (b), 68 Fed. Reg. at 69920 (December 15, 2003).

³⁶42 CFR 403.810(d), 68 Fed. Reg. at 69920 (December 15, 2003).

³⁷Figure 2, "The Non-Institutionalized Medicare Population by Poverty Level, 2002," in *Medicare at a Glance* (March 2004), Henry J. Kaiser Family Foundation. www.kff.org. The Congressional Budget Office estimates that in 2006 there will be 13.3 million Medicare beneficiaries with incomes at or below 135 percent of the Federal Poverty Level, of whom 5.5 million will be dual eligibles. CBO does not have comparable estimates for 2004 or 2005. The CBO estimates for 2006 do not identify how many of the 7.6 million Medicare beneficiaries who are not dual eligibles have group health insurance coverage for drugs that would disqualify them from transitional assistance. CBO, Letter to the Chairman of the Senate Budget Committee (November 20, 2003), Table 4, www.cbo.gov.

³⁸Data from National Conference of State Legislatures, Table 1, State Subsidy Programs and Table 2, State Pharmaceutical Discount Programs. A number of states operate more than one program. Of the 22 states operating subsidy programs, 2 (Maine and Michigan) had closed enrollment. Six states had enacted SPAPs but had not, as of February 2004, implemented their programs. <http://www.ncsl.org/programs/health/drugaid.htm>.

³⁹J. Guyer, *The Financing of Pharmacy Plus Waivers: Trade Offs between Expanding Rx Coverage and Global Caps in Medicaid* (May 2003), www.kff.org.

⁴⁰National Conference of State Legislatures, "2004 Prescription Drug State Legislation" (forthcoming).

⁴¹National Conference of State Legislatures, "2004 Prescription Drug State Legislation" (forthcoming).

⁴²*Medicaid Resource Book* (July 2002), pp. 38-39, www.kff.org.

⁴³D. Rosenbaum, *New Food Stamp Outreach Opportunity: Medicare Discount Drug Card Offers an Opportunity to Expand Food Stamp Enrollment Among the Elderly and People with Disabilities* (January 29, 2004), Center on Budget and Policy Priorities, www.cbpp.org.

⁴⁴J. Guyer, *Implications of the New Medicare Prescription Drug Benefit for State Medicaid Budgets* (December 2003), www.kff.org.

⁴⁵The data required of states relating to dual eligibles, who are excluded from the discount card and transitional assistance programs, is specified in a State Medicaid Director letter dated December 15, 2003, SMD #03-010, <http://www.cms.hhs.gov/states/letters/smd121503.pdf>. The state costs of transmitting this information are subject to a 50 percent federal match. 42 CFR 403.815(d), 68 Fed. Reg. at 69924 (December 15, 2003).

⁴⁶42 CFR 403.815(a)(1), 68 Fed. Reg. at 69923 (December 15, 2003).

⁴⁷C. Kent, "The Medicare Discount Drug Card: States Get Ready to Make it Work," *State Health Notes* (April 5, 2004), p. 3.

⁴⁸42 CFR 403.815(b)(1), 68 Fed. Reg. at 69923 (December 15, 2003).

⁴⁹Under Medicare Part D, beneficiaries with incomes below 135 percent of the federal poverty level and countable resources of less than \$6,000 (\$9,000 for a couple) are eligible for a full premium subsidy and a substantial cost-sharing subsidy. Section 1860D-14(a)(1) of the Social Security Act.

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