



Safety Net Hospitals for Pharmaceutical Access

April 20, 2009

Mr. Tom Hutchinson
Director, Medicare Plan Payment Group
Center for Medicare Management
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Mail Stop S2-22-25
7500 Security Blvd.
Baltimore, MD 21244

Dear Mr. Hutchinson:

Safety Net Hospitals for Pharmaceutical Access (SNHPA) is writing to seek your assistance in addressing an issue relating to the billing of Medicare Part D plans for 340B-priced brand name prescription drugs when such drugs have been substituted for formulary-preferred generic drugs that are more expensive. We need your help in communicating to the Part D plans that they should stop denying claims – in contravention of National Council on Prescription Drug Program (NCPDP) standards – when 340B pharmacies utilize the NCPDP “DAW5” billing code to take advantage of 340B prices on substituted brand name drugs that are lower than the prices that would be charged for preferred generics.

SNHPA represents more than 500 of the disproportionate share hospitals that receive deep discounts on outpatient drugs under the federal 340B program due to the large volume of services the hospitals provide to Medicare, Medicaid, and indigent patients. SNHPA’s members include rural hospitals, large inner-city public hospitals, academic medical centers, high-Medicaid urban hospitals, and other safety net institutions. Most 340B hospitals operate or contract with outpatient pharmacies that participate in the Medicare Part D program.

SNHPA has recently learned from its members that many Part D plans are denying claims for 340B-priced brand name products billed under the NCPDP “DAW5” billing code when those drugs are dispensed in place of formulary-preferred multiple source products that are more costly. We believe the plans’ rejection of claims under this billing code is noncompliant with NCPDP standards. Moreover, it deprives safety net pharmacies of the savings they are entitled to receive under the 340B statute, savings that they utilize to support the health care services they provide their patients. The rejection of DAW5-coded claims leaves our members little choice but to dispense non-340B generic drugs preferred under the plans’ formularies, even though the preferred drugs are more expensive than 340B-priced brand name substitutes.

Part D plan drug discounts do not nearly approach those available under the 340B program. 340B prices for brand name drugs average 51 percent of average wholesale price (AWP). Part D plan prices for brand name drugs average AWP minus 15 percent, and prices for generic drugs average 45 percent off AWP under even the very favorable estimate of Part D prices provided to the House

Oversight Committee in 2008 testimony by former CMS Acting Administrator Kerry Weems. The House of Representatives Oversight and Government Reform Committee has reported that Part D plans receive no rebates on 98 percent of the best-selling generic drugs.

We understand that Part D plan sponsors are free under federal law to negotiate with providers the terms and conditions for participation in their Part D plans. However, the plans appear to be ignoring a standard created to facilitate electronic billing under Medicare and Medicaid, and in doing so are arguably impairing efforts by the Administration to produce an interoperable e-prescribing and electronic health care records system. Further, by blindly adhering to their formularies, the Part D plans are indirectly reducing both prescription drug savings for 340B providers and Part D beneficiary access while achieving no real savings for the plans, the Part D program, or the beneficiaries. The 340B providers seeking to bill claims for brand name drugs under the DAW5 code are both willing and expecting to be paid at the reimbursement levels provided by the plans for their preferred generic drugs.

For these reasons, SNHPA asks that the Center for Medicare Management join it in urging the Part D plans to comply with the NCPDP standard on DAW5 billing. 340B providers should be able to bill DAW5 claims that permit substitution of 340B-priced brand name drugs for more costly formulary-preferred generics.

If you have any questions on these issues or others involving interaction between the 340B program and Medicare Part D, please feel free to me at 202-552-5851 or stuart.gordon@safetynetrx.org or SNHPA Director of Pharmacy and Educational Services, Andrew Wilson, at 202-552-5857 or andy.wilson@safetynetrx.org.

Thank you for your assistance in this matter.

Sincerely,



Stuart Yael Gordon
Director of Legal and Regulatory Affairs

cc: Lynne Gilbertson, Vice President for Standards Development, NCPDP
Jimmy Mitchell, Director, Office of Pharmacy Affairs
Jonathan Blum, Director, Center for Medicare Management, CMS