

Action Alert: Immediate Action Needed to Preserve State Medicaid Prescription Drug Rebates

By Sharon Treat, NLARx Executive Director

Health care reform brings with it both opportunities and challenges for the states. One of the challenges is how to address major changes in the way Medicaid prescription drug rebates are calculated, as well as changes to the formula controlling how much of supplemental rebates stay with states to offset Medicaid costs and how much goes to the federal government.

These changes, some of which are retroactive to January 1 of this year, will cost many states millions of dollars, and unless states act swiftly to directly collect drug pricing information and to modify their Preferred Drug Lists (PDLs), the financial hit will continue into the future. While over time, state Medicaid programs stand to benefit financially with greater federal cost sharing under the Affordable Care Act, and on balance will come out ahead financially, the retroactivity of the drug rebate changes means that states will have to quickly come up to speed and make immediate changes to avoid negative impacts on this year's budget.

Drug rebates are how states "negotiate" drug prices with the manufacturers. A state that has been really aggressive about securing both federal "best price" rebates and state "supplemental" rebates could be receiving 40-50% of its Medicaid prescription drug spend back in the form of rebates from drug manufacturers. New rules in the Affordable Care Act, though, increase the federal share of some supplemental rebates retroactively - money some states have collected in the past and are relying on to balance this year's budgets.

Specifically, states that already receive supplemental rebates greater than 15.1% of "Average Manufacturer Price" (AMP) will have to pay over to the federal government the value of rebates between 15.1% and 23.1% of AMP. Potentially offsetting this impact for some states, another provision will allow states for the first time to collect rebates for prescription drugs purchased through Medicaid managed care.

Changes to allowable state rebates for "line extensions" - newer versions and different dosages of existing drugs - also complicate this picture. Under the law CMS will keep all new rebates due to line extension changes, a policy change that will require states to change their PDLs promptly to incorporate equivalent drugs that provide greater rebates - or pay more than they have budgeted in their Medicaid budgets. These PDL choices must also be examined in light of state laws that grandfather particular drugs, for example in mental health services.

Congress has also changed the base price from which rebates are calculated. The problem for states is that drug manufacturers report data on this base price to CMS - **NOT** to the states. Unfortunately, CMS is currently *barred by [court order](#)* from sharing data with the states on the "Average Manufacturer Price" (AMP) and federal "Best Price," *even though states must have this data in order to negotiate rebates with the industry and calculate the federal share*. This information is also necessary for states to take advantage of new rebate opportunities under the managed care provisions in the Affordable Care Act.

The only states that have accurate data from which to negotiate rebates with the drug companies, and to accurately calculate what they owe the federal government, are states that have already passed their own laws requiring the

drug companies to report AMP and "Best Price" directly to them.

Very few states have such laws; we know only of laws in [Maine](#) and Vermont. This is an emergency issue for State Medicaid directors and State Legislatures. States need to immediately review their PDLs and make changes as appropriate from a clinical perspective to reflect retroactive changes in rebate policies that will affect their budgets this year, and to pass a state drug price reporting law. NLARx has drafted a model AMP/best price bill to address the data reporting issue.

What can you do?

- Introduce the [Model AMP/Best Price Act](#). Contact Sharon Treat if you are interested.
- Attend the **NLARx summer meeting August 18th in Portland, Maine**. The entire meeting is devoted to prescription drug policy changes that affect the states which result from the Affordable Care Act. We will have policy experts Robin Lunge, Esq. of the Vermont Legislative Council and Jude Neveux of Goold Health Systems present in detail on the rebate issue, and will also hear about Medicare Part D, and new federal advertising and marketing disclosure rules from several other speakers. Check out our website for more information and to [register](#). Space is limited, so don't delay!
- Read up on these issues on the website of the National Association of State Medicaid Directors, which has written to CMS with many questions about the rebate changes, and has posted white papers and other materials of interest [more](#).

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