AD HOC COALITION TO PROTECT DUAL ELIGIBLES IN NEW YORK

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Kathleen Kuhmerker, Deputy Commissioner
Brian Wing, Deputy Director
Office of Medicaid Management
NYS Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Ms. Kuhmerker and Mr. Wing,

We are writing to request that the State provide dual eligibles with early refills or extended supplies of prescriptions in late 2005, to alleviate a crisis in the transition to Medicare Part D.

As we discussed when we met with Brian Wing and Marilyn Desmond in June, a major concern that we have is that the transition to Part D will have some glitches, and that vulnerable people could be left without access to medication while the glitches are worked out. One way to prevent the harm that could occur would be to allow beneficiaries to receive an extended supply of prescriptions before Part D is enacted. We had asked whether the State would implement that option, permitted by CMS, allowing beneficiaries, including full benefit dual eligibles, to receive an early refill or an extended supply (30-90) days of their prescriptions near the end of 2005. This state option, which would provide full FFP, was set forth in CMS guidance dated May 2, 2005.[1] At our meeting you expressed a concern that implementing this option would increase the State's clawback in 2006 or future years. We would like to respond to that concern.

[1] CMS, "A Strategy for Transitioning Dual Eligibles from Medicaid to Medicare Prescription Drug Coverage" May 2, 2005. http://www.cms.hhs.cov/medicarereform/strategyforduals.pdf page 4.

The amount of the clawback will be determined by per capita Medicaid expenditures on prescription drugs covered under Part D for 2003. The formula for calculating changes in subsequent years will not be affected by increased drug expenditures in 2005.[2] Since the clawback will -- in 2006 and all future years -- be based on Medicaid expenditures for prescription drugs made in 2003, extra expenditures in 2005 will not increase the clawback.

We realize that the state and local share of this expenditure will in fact cost money. However, any increased costs are likely to be offset by other savings. First, the cost of 90 day refills in 2005 will be at least partially offset by a reduction in Medicaid wraparound costs in early 2006. Second, this one-time expense will likely result in other Medicaid cost savings -- saved trips to the emergency room or for acute medical care which would no doubt result from interruption of vital drug regimens for chronic health conditions. Third, the State will receive full FFP for the extra refills or extended supplies, since the payments will be made in 2005, while Medicaid still covers prescription drugs.

Authorizing Medicaid reimbursement for a 90 day supply of medication is consistent with the state Medicaid plan and existing regulations. In fact, current regulation provides two different mechanisms under which 90 day supplies could be provided to dual eligibles. *See* 18 N.Y.C.R.R. § 505.3(e)(2)(ii). First, dispensing limits do not apply to "long-term maintenance drugs," which are defined as drugs ordered or prescribed with one or more refills in quantities of a 30 day supply or more, or without refills in quantities of a 60-day supply or greater. Second, prescriptions written and dispensed on the official New York State Triplicate Prescription form may be for up to a three-month supply (these must be written in conformance with the Controlled Substance Act). *Id*.

Additionally, authorizing a 90-day supply or extended refills is consistent with the MMIS Provider Manual, which provides:

> Drugs and medical/surgical supplies should be ordered in sufficient quantity consistent with the health needs of the Recipient and sound medical practice. In instances of acute illness, the quantity should be limited by the prescriber to the supply necessary for the estimated duration of the illness. In instances of chronic or long-term illnesses, a thirty (30) day supply or more should be dispensed as ordered by the prescribing practitioner.[4]

Since implementing this protective measure will require education of prescribing physicians, pharmacies, as well as recipients, which will take time, we ask you to adopt

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[2] The formula includes the annual percent increase in per capita prescription drug spending nationally, the number of dual eligibles enrolled in a Part D plan in the month for which payment is made, and the phase-down percentage for the year of the payment. (Section 1935(c)(5) of the Social Security Act.)

[3] A good explanation of and charts explaining the formula are in a publication of the Kaiser Family Foundation, "The Clawback:" State Financing of Medicare Drug Coverage," June 2004 http://www.kff.org/medicaid/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=39919.

[4] MMIS Provider Manual, Pharmacy, Section 2.2.4.

this policy immediately. We look forward to working with you on this and other issues that will affect dual-eligible New Yorkers as they transition to Part D.

Very truly yours,

Valerie J. Bogart, Selfhelp Community Services, Inc.
Lisa Sbrana, The Legal Aid Society
Trilby de Jung, Empire Justice Center
Denise Soffel, Community Service Society

On behalf of:
Center for Independence of Disabled in New York (CIDNY)
Coalition of Voluntary Mental Health Agencies
Community Service Society
Council of Senior Centers and Services
Empire Justice Center
Fort Washington Houses Services for the Elderly, Inc.
Gay Men's Health Crisis
Geriatric Mental Health Alliance of New York
Institute for the Puerto Rican / Hispanic Elderly -- Hispanic Senior Action Council
The Legal Aid Society
Lenox Hill Neighborhood House
Long Term Care Community Coalition
Mental Health Association in New York State, Inc.
National Alliance for the Mentally Ill, New York City Chapter (NAMI-NYC Metro**)**
New York Immigration Coalition
New Yorkers for Accessible Health Coverage (NYFAHC)
NYS Council for Community Behavioral Healthcare
NY StateWide Senior Action Council
Selfhelp Community Services, Inc.
UJA-Federation of New York
Vladeck NORC, Henry Street Settlement

cc: Marilyn Desmond
Division of Policy and Program Guidance

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[5] 42 USC 1395w-114(a)(3)(B)(i); 42 CFR §§ 423.774(a) , 432.904, and Preamble ("The statute clearly sets forth the requirement that eligibility for the low-income subsidy program will be determined by either State Medicaid agencies or by the Social Security Administration. As such, States must have the ability to determine eligibility if someone requests a 'State' subsidy determination.)" ; Sec. 10.3.3 of CMS Guidance on Low Income Subsidy http://www.cms.hhs.gov/medicarereform/guidance5-25-05.pdf