



United States Department of Agriculture  
Food and Nutrition Service

Western Region

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Reply to  
Attn of: FSP – Administrative Notice 04-45                      July 13, 2004                      FS-2-GEN

Subject: FSP – **Questions and Answers Regarding the Medicare-Approved Discount Drug**  
To: **Card Policy**

ALL WESTERN REGION FOOD STAMP PROGRAM COORDINATORS

Attached are questions and answers about the Food Stamp Program's treatment of the new Medicare Prescription Drug Card.

On June 23 the American Public Human Services Association (APHSA) held a conference call about the card. Food and Nutrition Service (FNS) regional offices, FNS Headquarters, and most of the State agencies were represented on the call. The questions in the attachment come largely from that call.

Some of the questions that the states raised require consultation with the Centers for Medicare and Medicaid Services (CMS). When CMS concurs with our answers, we shall issue those additional Q's and A's.

We appreciate the work that the state agencies have put into these questions. **If your State would like to participate in a conference call to discuss the Medicare discount drug card policy, please let your State Program Officer know by Friday, July 16, 2004.** The conference call will be scheduled the week of July 19, 2004.

If you have any questions, please contact your State Program Officer.

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## Questions and Answers Related to the Guidance on Medicare-Approved Drug Discount Card

### ■ EFFECTIVE DATE/QUALITY CONTROL

**Question:** What is the effective date of this policy?

**Answer:** This policy became effective with the June 1, 2004 implementation of the Medicare Modernization Act's (MMA) Medicare-Approved Drug Discount Card Program. However, to allow State agencies time to implement the new policy, FNS is requiring State agencies to implement the provisions of the June 18, 2004, policy guidance no later than October 1, 2004.

**Question:** What is the Quality Control (QC) impact?

**Answer:** These cases will be included in the QC sample and they will be reviewed in accordance with established QC procedures.

**Question:** Is there a hold harmless period? What is it?

**Answer:** There will be a 120-day QC hold harmless period

**Question:** When does the hold harmless period begin?

**Answer:** The 120-day hold harmless period will run from the date the State agency implements the new policy, October 1, 2004, whichever is later.

In addition to the 120-day hold harmless period, State agencies shall also exclude variances that occur between June 1, 2004, and October 1, 2004, or the date the State agency implements the new policy, whichever comes first, under the provisions of 7 CFR 275.12(d)(2)(viii). That exclusion applies until such time as the affected household is recertified or the State agency is otherwise required to act on the household's medical deduction.

**Answer:** Does the QC variance apply only to current recipients or will it apply to future applicants as well?

**Question:** The variance exclusion applies to all households for which the State agency takes action and who are eligible for a medical deduction during the State's hold harmless period. This includes currently certified households or households that are recertified or households that report updated medical expenses during the 120-day period. It also applies to households that initially apply during the 120-day hold harmless period. The hold harmless period does not apply to future applicants who apply outside of the

120-day exclusionary period.

## **ELIGIBILITY AND VERIFICATION**

- Question:** How do you know when an individual gets a card?
- Answer:** It is the obligation of the recipient to inform the State agency that they are participating in the program by providing them with information regarding their participation in this program.
- Question:** Can we assume that if an individual receives the card in 2004 that they will also receive it in 2005?
- Answer:** Yes, unless there is evidence to the contrary, a State agency should anticipate that individuals who receive the card in 2004 will renew their participation for 2005. The renewal process is automatic for individuals who receive the \$600 subsidy. Only those individuals who are not eligible for the subsidy will have to renew and pay the 2005 enrollment fee, if applicable. Once a beneficiary signs up, s/he is signed up for the remainder of the year. Also, the beneficiary may choose another card during the open enrollment period, which is November 15 through December 31, 2004.
- Question:** Since the State agency is allowed to average the subsidy over the remaining months in 2004, are they required to follow up with the beneficiary in January 2005?
- Answer:** When a household reports that a member has received the 2004 subsidy, it is reasonable to anticipate that the same member will receive the full 2005 subsidy. If the household's new or current certification period would extend into 2005, the local food stamp office would budget the 2005 subsidy when it budgets the 2004 subsidy.
- Question:** How do you verify that an individual is receiving the subsidy?
- Answer:** FNS believes that virtually all cardholders who document their income for food stamp purposes at no more than the gross income test will receive the subsidy. To simplify administration of the Medicare-approved drug discount card policy, FNS has determined that States will deem to be receiving the subsidy any cardholder whose income is no more than 130 percent of the Federal poverty level. No further verification is necessary.
- Question:** If an individual has a card and they do not tell the

eligibility worker that they have it, what does the eligibility worker do? What responsibility does the eligibility worker have to investigate?

**Answer:** At the interview, the State agency should direct eligibility workers to ask households with members who are eligible for the excess medical deduction whether they have applied for and received the Medicare-approved drug discount card. However, if the household has in fact received the card, and the case is reviewed by QC, there is the potential for a variance in the case. This would not be the case in States which have a statement on the application form that a household that fails to report a deductible expense will be considered to have rejected the deduction.

**Question:** Does the drug card policy apply to both applicants and recipients?

**Answer:** Yes, this policy should be applied to applicants and recipients alike. States must pick one of the allowable options in budgeting the value of the subsidy and apply it consistently to both applicants and recipients.

## **CALCULATING THE MEDICAL DISCOUNT**

**Question:** How do State agencies administer the options allowed? May a State agency choose to leave the choice to individual eligibility workers, so that the worker may select the option most beneficial to the individual household?

**Answer:** No. The State agency must select an option and apply it uniformly across the State.

**Question:** Would a State agency that uses the standard expense allowance also allow a medical deduction of \$23 per month, regardless of actual prescription costs for all households that have a discount card?

**Answer:** The \$23 per month standard expense allowance is an amount that CMS has estimated as the value of the prescription drug discounts received by holders of this card. Therefore, if a State agency selects this option as their method of calculating an individual's benefit amount, they must use the \$23 standard as the amount to add to the individual's out-of-pocket expenses and subsidy amount to calculate the total medical expense.

If an individual opts to use the actual out-of-pocket

prescription expenses that they incurred prior to using the discount card, they have the right to do so. In that case, the State agency would simply calculate the individual's benefit amount using the receipts produced by the individual.

- For example: Prior to using the discount card, the individual incurred prescription expenses of \$300 per month but now pays \$150 per month out-of-pocket using the discount card.

When the eligibility worker calculates the benefit amount using Option 2: They use the following formula:

$$50 + \$50 \text{ (subsidy)} = \$200$$
$$\$200 + \$23 \text{ (standard expense)} = \$223 \text{ (total)}$$

Since this amount is less than the \$300 that the individual incurred before he started using the discount card, if the individual can demonstrate that his expenses totaled \$300 prior to using the card, the eligibility worker can use \$300 when calculating the individual's benefit amount. This is at the option of the individual and based on their ability to produce adequate documentation.

**Question:** When you apply either the discount factor to actual costs or use the standard expense allowance, if the actual costs of the prescriptions were larger than the amount calculated using either formula, are you required to use the larger cost?

**Answer:** An individual participating in the program always has the option to claim the actual out-of-pocket prescription expenses that they have incurred prior to using the discount card if those expenses exceed the total amount calculated using either formula for applying the discount option. However, that individual must provide documentation to demonstrate the amount of these actual pre-discount expenses. The purpose of this policy is to insure that an individual does not lose benefits.

For example: Prior to using the discount card, the individual incurred medical expenses of \$300 per month but now pays \$150 per month out-of-pocket using the discount card.

When the eliiaibility worker calculates the benefit amount

using Option 1: They use the following formula:

- o  $\$150 + \$50$  (subsidy) =  $\$200$
- o  $\$200 \times 1.25 = \$250$  (total monthly expenses)

Using Option 2: They use the following formula:

- $\$150 + \$50$  (subsidy) =  $\$200$
- $\$200 + \$23$  (standard expense) =  $\$223$  (total)

Since this amount is less than the \$300 that the individual incurred before he started using the discount card, if the individual can demonstrate that his expenses totaled \$300 prior to using the card, the eligibility worker can use \$300 when calculating the individual's benefit amount.

- Question:** If a household has a Medicare discount card, can you disregard the standard \$35 deductible when calculating the household's medical expenses?
- Answer:** No, because the provision providing for the deduction of medical expenses to the extent that they exceed \$35 per month is specifically mandated under Section 5(e)(5) of the Food Stamp Act.
- Question:** If an individual does not pay any out-of-pocket prescription drug expenses, do they still get the deduction?
- Answer:** If the individual's prescription drug card covered all the individual's prescription drug expenses, the cardholder would still be eligible for the standard expense allowance.
- Question:** When applying the discount factor to actual costs, do you apply the discount factor to only one prescription or do you apply it to all prescription expenses for the month?
- Answer:** Apply the discount factor to all prescription expenses for the month.
- Question:** When the State agency assigns a certification period shorter than 12 months, and the state agency has chosen to prorate the subsidy over the certification period, what will be the effect on the household?
- Answer:** In a very short certification period, the State agency would prorate the \$600 subsidy over two or three months. This household could lose much of the benefit of the deduction, since any deduction that exceeds income is lost. Therefore in choosing which option to take, State agencies should consider this consequence.

- Question:** Can the \$30 cost of the card be averaged over the certification period?
- Answer:** Yes, although most food stamp clients will actually not have to pay for the card because their incomes are so low.
- Question:** If FNS would have just told States to keep using the pre-discount drug expenses and disregard the \$600 subsidy and income and resources, the household's food stamp benefits would not have increased. That is simple to implement. Why can't States use this method since food stamp benefits would not decrease?
- Answer:** If a client has no change in a prescription, the pre-card cost would be a valid way for the Food Stamp Program to hold the client harmless. But "no change" would mean:
- No change in the medicine's over-all price
  - No change in the dose
  - No new prescription
  - No stopping an old prescription.

However, clients' medicines do often change, so it is necessary to have some way to estimate the subsidies and discounts. Also, it is more than likely that clients will only be able to document the discounted amount that they will pay out-of-pocket. Finally, the \$600 subsidy would not necessarily be accounted for in the out-of-pocket expenses if just the pre-card price were used.

## THE SUBSIDY

- Question:** If a person is eligible for the subsidy, is the amount always \$600 or can the maximum amount authorized for the person be less?
- Answer:** In 2004, the amount of the subsidy is \$600 per client per year.
- In 2005, a person who is newly applying for the prescription card loses \$150 with every quarter that passes. Therefore, someone coming in to apply for the card in April, May or June of 2005 will only qualify for a subsidy of \$450. That amount will continue to decrease every quarter.
- Question:** If you find out in 2005 that an individual received the \$600 subsidy in 2004, can you roll the \$600 from 2004 into 2005?

**Answer:** No. For food stamp purposes, the 2004 subsidy was made available for 2004.

**Question:** If the individual does not pay any out-of-pocket expenses, is the \$600 subsidy still accounted for in their deduction?

**Answer:** Yes. We assume that most of the clients will actually use the two \$600 subsidies. We think that it will be easier, then, for a State agency to treat the subsidies as medical expenses for all those who receive them, rather than trying to anticipate each Medicare client's future actual use.

**Question:** Since we are budgeting the \$600 subsidy whether or not they actually use it, shall we also budget the appropriate 10 percent or percent of the beneficiary's co-pay on that \$600 whether or not they actually use it?

**Answer:** No. The \$600 subsidy is a benefit that is provided to increase an individual's disposable income. The co-payment is an expense that individuals incur in the purchase of prescription drugs and payment of medical necessities. The rules governing the use of the Medicare-approved drug discount card do not allow for the \$600 subsidy to cover the beneficiary's co-pay.

**Question:** Suppose a new household applies for food stamps in October 2004. A member of the household has received the \$600 subsidy. The State agency has chosen to prorate the subsidy over October, November, and December, giving the client a \$200 monthly deductible expense for the subsidy. In 2005 they are re-enrolled and will receive \$50 per month for 12 months. So, their benefits will decrease, correct?

**Answer:** Yes. This is because the State agency chose to prorate the 2004 subsidy only over the months that remain in 2004.

**Question:** A State has chosen to prorate the subsidy over twenty four months at \$50 a month. If a household applies for food stamps in December, 2004, would the 24 months run from December 1, 2004 to November 30, 2006? Would it matter when the individual applied for or actually received the 2004 subsidy?

**Answer:** Yes, the proration would cover December, 2004 through November, 2006. The date that the client applied for or received the subsidy does not affect the actual months of proration for the discount card's subsidy. The amount prorated would include the full subsidy amount for 2004 and 2005 for a total of \$1,200.

**Question:** When the individual is up for redetermination and has already used the \$600 subsidy, do you still include that in their budget?

**Answer:** Yes. The options all require some proration of the \$600 subsidy. None of the options for budgeting the subsidy involve tracking the client's actual use of the subsidy. Therefore, actual use is not an issue.

**Question:** The option involving prorating the two subsidies over 24 months seems to offer the least amount of work and be the easiest to administer, but even that is error prone as the worker must track the 12 and 24-month periods which may not be simple, especially if there are breaks in participation. This option does not say anything about not going beyond December 31, 2005 with the \$50 deduction.

**Answer:** First, there is no need to track the 24 month period. The 24-month period would begin when the State agency can include the \$50 in the allotment calculation and then run consecutively through 24th month. Second, a break in participation would not matter. If, for some reason, the client left the Food Stamp Program, there would be no effect on the \$50 monthly prorated amount. Third, the example in the memorandum specifically refers to budgeting the deductible expense through June, 2006.

## **STATE AGENCY ADMINISTRATION**

**Question:** Would we have to give each household an option or can we decide statewide which option we want?

**Answer:** The State agency must pick a deduction method and apply it to all the households with cardholders.

**Question:** States that choose different options will be giving clients with the exact same circumstances differing amounts of benefits. Is this true?

**Answer:** Yes. But that is true whenever State agencies have options (monthly reporting versus simplified reporting, actual utilities versus mandatory allowances, etc.).

**Question:** Who does the State agency need to notify about what option they choose?

**Answer:** The State needs to document their option and send it to their regional office as soon as possible.

**Question:** Are States required to give restored benefits?

**Answer:** Yes. Any case that was adversely affected because the

new policy was not applied to the medical expense deduction is eligible for restoration of lost benefits. The time frame for restoration would be actions that took place between June 1, 2004, and the date the State agency implements the new policy.

**Question:** If the State agency uses the simplified reporting option, how do households report? Is FNS coming up with this reporting requirement?

**Answer:** Under the simplified reporting option as provided under 7 CFR 273.12(a)(1)(vii) and Section 4109 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill), households are required to report only changes that would result in gross income exceeding 130 percent of the Federal Poverty Level. Changes related to the Medicare-approved drug discount card, like all changes regarding the medical expense deduction, would be reportable only at recertification. However, the State agency would be required to act on all changes related to the card that would increase the household's benefits if voluntarily reported by the household.

**Question:** If a State agency has taken on the Farm Bill option not to act on changes, what takes precedence, the option not to act or this policy?

**Answer:** We assume that this question refers to Section 4106 of the Farm Bill which permits the State agency to defer action on changes in deductions. We have determined that the implementation of changes in the household's deductible medical expenses related to the implementation of the Medicare-Approved Drug Discount card will take precedence over the option to ignore changes.

**Question:** Why have this complex policy instead of looking at the individual's actual drug expenses?

**Answer:** First, by allowing the household to claim only their out-of-pocket costs we would be taking into account the benefits of the subsidy when determining the individual's benefit amount. This would run contrary to the MMA which states that the discount and subsidy shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for or the amount of benefits under any other federal program. If an eligibility worker only looks at the individual's actual expenses, the only actual expenses that an individual participating in this program would have are the out-of-pocket expenses they incur after the discount and subsidy.

Second, the intent of this policy is to allow individuals to break away from having to document actual costs and use a standard. It should be easier for recipients to have this standard rather than trying to figure out their actual expenses.

## **IMPACT OF THE PROGRAM**

**Question:** When a State agency gets a waiver from the regulations, program costs cannot increase. Why is it that this “waiver” from regulations FNS allows the Program costs to increase?

**Answer:** First, this is not a waiver of the regulations. Second, Federal law requires that the prescription card’s benefits not affect a food stamp household’s eligibility or benefit level. While there is legitimate disagreement about the best ways to accomplish this goal, violating Federal law is not an option. If compliance with Federal law results in higher costs, the Food Stamp Program will pay these costs.

**Question:** If a client's certification period extends in calendar year 2006 beyond the subsidy allowance, what are the expectations for the State agency in removing the amount from the budget? Will FNS consider making any provisions such as allowing 90 days after the period ending?

**Answer:** The State agency would remove the subsidy effective with the first month after the 24th month of proration.

For example, suppose the individual applied for food stamps in September, 2004. The State agency certifies the household for 12 months, from September 1, 2004 to August 31, 2005. The State agency would prorate the two \$600 subsidies, at \$50 a month, from September 1, 2004, through August 31, 2006. In August, 2005, the State agency recertifies the household and gives the client a 24-month certification period, from September 1, 2005 through August 31, 2007, still using the \$50 monthly prorated subsidy. That subsidy will disappear from the allotment calculation for September, 2006, because it was all used up on August 31, 2006.

There would be no reason to give the State agency more time to remove the subsidy from the prorated calculation. The State agency would have known for two years that

the prorated subsidy expires on August 31, 2006.