Special Report on the Analysis of the Fiscal Year 2007 Fiscal Impact of the Implementation of "Average Manufacturer Price"

Virginia Department of Medical Assistance Services

November 15, 2007

Authority for the Report

Item 302 Y of the 2007 Appropriations Act requires the Department of Medical Assistance Services (DMAS) to conduct an analysis of the fiscal impact of the implementation of the "Average Manufacturer Price" (AMP), as required by the Federal Deficit Reduction Act of 2005, Public Law 109-171. By November 15, 2007, the Department is required to report to the Governor and the Chairmen of the Senate Finance and House Appropriations Committees the amount of savings anticipated in the November 2007 Medicaid Forecast as a result of this change in federal law. In the event that anticipated pharmacy savings exceed the amount of savings assumed in the 2006 Medicaid Forecast, DMAS is requested to make recommendations regarding the adjustment of pharmacy dispensing fees based on the impact of changes in local pharmacy reimbursements.

Background

The Deficit Reduction Act (DRA) established a new Federal Upper Limit (FUL) calculation, which represents the maximum the federal government will pay to states in federal matching funds for multi-source drugs (generics) dispensed through state Medicaid programs. The FUL is one of four different pricing methodologies used to reimburse pharmacies for prescription drugs in Virginia's Medicaid program. The new FUL is calculated at 250% of the lowest Average Manufacturer Price (AMP) in a generic drug class. The AMP is a calculated price which more accurately represents the price that a pharmacy pays to acquire a drug.

The DRA changes were prompted by a series of 2004 reports by both the Government Accountability Office (GAO) and the HHS Office of the Inspector General (OIG) showing that Medicaid payments to pharmacies for generic drugs were higher than what pharmacies were actually paying for those drugs. The GAO and OIG found that states were overpaying for drugs because they were using commercial drug pricing guides as the basis for setting state reimbursement levels. The investigation of these drug price "compendia" documented that these prices were artificially inflated, especially for generic drugs.

One goal of the DRA was to encourage states to pay pharmacies more appropriately for the estimated acquisition cost of generic drugs. Prior to the DRA, actual drug prices were considered proprietary information and were only used by the Centers for Medicare & Medicaid Services (CMS) to calculate rebates; even CMS was prohibited by law from disclosing AMPs. The DRA now makes AMP data available to states for use in determining reimbursement for generic drugs under the Medicaid Program.

Based on the estimated impact of the new FUL methodology (originally required for implementation on January 1, 2007), the DMAS appropriation was reduced by $2.2 million (total funds) in FY2007, and $4.4 million (total funds) in FY2008. These savings projections were based on preliminary AMP data available from CMS. Pharmacy industry savings estimates were somewhat higher than the Department projections.

Discussion

The original effective date of January 1, 2007, for this regulation was delayed to allow for additional public comment, and the regulation now takes effect on October 1, 2007. However, manufacturers will not report the October 2007 AMPs until November 30, 2007, and CMS will not publish the new FULs until December 30, 2007. Therefore, the calculated AMP-based FULs will not be effective for pharmacy payment until January 30, 2008.

Conclusion

At this time, because of delays in implementation by the federal government, DMAS is unable to provide recommendations responsive to the requirements of Item 302 Y of the 2007 Appropriations Act. The data necessary to develop a more accurate savings estimate are simply not yet available. However, the 2007 forecast will change based on normal updated utilization and cost data, and based on the fact that the new FUL methodology will now only impact five months in FY2008.

DMAS will provide updated information on the savings impact of the AMP provision when additional data becomes available.