DEPARTMENT OF HUMAN SERVICES

Policy Brief

02/22/2018

Federal Medicaid Drug Rebate Program

The Omnibus Budget Reconciliation act of 1990 (OBRA 90, Social Security Act Sec. 1927 [42 U.S.C. 1396r-8]) established a federal Medicaid drug rebate program. This program, which started in 1991, requires that a manufacturer pay a cash rebate to the state for every unit of their product dispensed to a fee-for-service Medicaid enrollee. Manufacturers who decline to participate in the program are not eligible to have their products covered under fee-for-service Medicaid. The Affordable Care Act (ACA) expanded the rebates to include claims paid under managed care arrangements. The ACA also increased the rebate rates due from the drug manufactures.

Each quarter, staff at the Department of Human Services (DHS) generate invoices that detail the total units of each product used and send a rebate invoice to the drug manufacturer. The manufacturer sends the payment back to the state for distribution into the appropriate funds. The Centers for Medicare and Medicaid Services (CMS) is responsible for oversight of the federal Medicaid rebate program, including the calculation of the per unit rebate amount that is applied to each manufactures' drug.

Every year, DHS spends about $1.1 billion on outpatient drugs and invoices manufactures approximately $500 million in drug rebates. The Medicaid drug rebate partially offsets the cost of administering the pharmacy benefit for the Medicaid program in Minnesota (Medical Assistance). Minnesota does not retain the entire amount of the drug rebate: about 30 percent ($150 million) is deposited to the state's general fund while 70 percent ($350 million) is credited to the federal government as required by law.

The Medicaid drug rebate partially funds the administration of the pharmacy benefit for Medical Assistance, so any diversion of the funds for other purposes will need to be offset by an equal appropriation back to DHS to preserve the pharmacy benefit. It is also important to emphasize that if the drug rebate funding is used to pay for a statewide initiative, then funding currently attributed to the Medicaid program would be subsidizing treatment for non-Medicaid eligible individuals (e.g. commercially insured citizens).

Clarifications about the Medicaid Drug Rebate Program

1. **Manufacturers can opt out of the Medicaid drug rebate program**
   A manufacturer needs to participate in the Medicaid Drug Rebate Program only if they want their drugs to be covered by Medicaid.

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2. **The drug rebate amounts are prescribed in federal law**
   Manufacturers report data to CMS that is used to calculate the drug rebate amount for a drug. CMS then provides this information to DHS and DHS prepares an invoice to the manufacturer.

3. **The calculation of the Medicaid drug rebate is based on a percentage of a drug's average manufacturing price not the price that a consumer would pay for a drug**
   There is no requirement that a manufacturer prices drugs based on the average manufacturing price (AMP), so the percentage of AMP used to calculate the drug rebate doesn't correlate to the percent a manufacturer pays relative to the price of their drug to consumers. For example; a drug may cost $1 to manufacturer, but the manufacturer could charge $100 to consumers. The drug rebate would be based on the $1 manufacturing price, not the $100 sales price.

4. **The Medicaid drug rebate is at least as good as the discounts offered to pharmacy benefit managers**
   If the calculated Medicaid drug rebate is not as good as a discount offered to a pharmacy benefit manager (PBM), then the manufacturer must match the offer that is provided to the PBM for Medicaid drug rebate. This provision of the federal law ensures Medicaid programs receive the "best price" for a drug relative to what other payers receive.

5. **Manufacturers are aware of the Medicaid drug rebate rules**
   Manufacturers know the calculations, payments and account for the rebates when setting the price of their drugs. The costs of the anticipated rebates are included in the list price of the drugs.