

PART D SUPPLEMENTAL PRESCRIPTION DRUG COVERAGE

GENERAL RULE

Qualified prescription drug coverage may be offered only in accord with new Medicare Part D requirements (and Part C in the case of Medicare Advantage (“MA”) Drug Plans). SSA section 1860D-2(a)(1). Supplemental coverage is broadly defined to mean: (1) a reduction in the annual deductible; a reduction in the coinsurance percentage; an increase in the initial coverage limit; or any combination; or (2) certain excluded drugs; or (3) both. SSA section 1860D-2(a)(2)(A). A PDP sponsor or MA-PDP may also reduce to “0” the cost sharing for preferred or generic drugs. SSA section 1860D-2(b)(5).

OUT-OF-POCKET RULE

The provision of supplemental prescription drug coverage is subject to the “catastrophic” drug costs protection rule that requires the out-of-pocket expenses to be paid by the Part D beneficiary. SSA section 1860D-2(a)(2)(A)(i)(II). To count towards the annual out-of-pocket threshold, drug expenses may not be reimbursed through insurance or otherwise, a group health plan, or other third party payment arrangement. SSA section 1860D-2(b)(4)(C) (ii).

ONLY PDP SPONSORS

A PDP sponsor (and an MA-PDP) must offer a Part D standard (basic) drug plan in an area in order to offer a supplemental drug plan in that area. SSA section 1860D-2(a)(2)(B). This is the only explicit provision regarding the types of entities that may offer supplemental drug coverage plans. Some may argue that the law does not explicitly proscribe other entities from offering supplemental coverage.

However, the term “qualified prescription drug coverage” is defined to include supplemental drug coverage, and only a PDP may offer qualified prescription drug coverage. SSA sections 1860D-2(a)(2)(A), 1860D-3(a)(3), 1860D-21(a)(2)(B). To offer qualified prescription drug coverage, an entity must have a contract with HHS as a certified PDP. SSA section 1860D-12(b)(1).

Finally a PDP is explicitly exempt from the definition of a “medicare supplemental policy” (i.e. “Medigap”). SSA section 1882(g)(1)(as amended by H.R. 1, section 104(b)(2) conforming amendment). Therefore, the standard (basic) and supplemental prescription drug coverage offered by a PDP is not regulated as “Medigap” insurance.

MEDIGAP COVERAGE

A Medigap issuer may not sell or issue a Medigap policy unless it meets the “standardization” rules established in the NAIC model regulation that provides for “groups or packages of benefits” in combination with a “core group of basic benefits”. SSA section 1882(p)(8). Accordingly, in order to provide any benefit that supplements

Part D, there must first be such a benefit in one of the groups or packages of benefits, or in the core group of basic benefits authorized under the “standardization” requirements of the NAIC model regulation. NAIC Model sections 8 and 9. Currently none of the standardized plan types provide for supplementary coverage of Part D prescription drug benefits; therefore, absent a new plan type, a Medigap policy may generally not offer such coverage.

The two new plan types explicitly added by the law provides for a limit on annual out-of-pocket expenses under Parts A and B to \$4,000 (or \$2,000). These plans will be amended to the NAIC model regulation by January 1, 2006. These new plan types do not provide for coverage of Part D cost sharing amounts.

NEW OR INNOVATIVE MEDIGAP BENEFITS

An exception to the “standardization” rule provides that an issuer of a Medigap policy may offer “new or innovative benefits” in addition to the “standardized” benefit plan types. Such benefits must “not otherwise be available” and must also be “cost effective”. SSA section 1882(p)(4)(B). Some states have approved drug benefit riders to a Medigap policy under this authority. See Letter from CMS Administrator Thomas A. Scully, to Insurance Commissioners (August 27, 2002)(characterizing a drug benefit as innovative).

However, such riders may be prohibited after January 1, 2006, as a “Medigap Rx Policy” that may not be sold, issued, or renewed to a Part D enrollee, or an individual who is not a Part D enrollee (exception for renewing policies issued before January 1, 2006). This is because a “Medigap Rx Policy” is defined to include a Medigap policy to which the standardization rules do not apply but which provides benefits for prescription drugs and there is no standardized plan type for such drug riders. SSA section 1882(v)(6)(A)(ii).

In addition, because Medicare will include a prescription drug benefit under new Part D, it is uncertain whether a drug rider would be “new or innovative”. Finally, it appears doubtful that insurance plans, other than PDPs, may supplement the Part D drug benefit.

CONCLUSION

It does not appear feasible for Medigap policies to offer a benefit that is supplemental to Part D even with an added standardized plan type or benefit changes to existing standardized plan types. This is because only a certified PDP may offer “qualified prescription drug coverage” and the new Medicare Part D rules define “supplemental prescription drug coverage” to be part of “qualified prescription drug coverage”.

Part D supplemental insurance coverage appears to be so broadly defined to include even the “coinsurance percentage” amounts required for the “catastrophic” drug cost benefit. SSA section 1860D-2(a)(2)(A)(i)(I)(reference to “a reduction in the coinsurance percentage”). Finally, coverage of any out-of-pocket costs to meet the annual “catastrophic” threshold would disqualify such expenses towards meeting the annual threshold.