

Responding to Enforcement Initiatives: Designing the Successor(s) to the Medicaid Rebate Program



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Current Medicaid Rebate design elements

- Universal contracting
- Rebates calculated by reference to
 - Best Price
 - AMP
- Reliance on NDC numbers
- Medicaid payment precedes rebates

Problems with current design elements

- Universal contracting means a lack of competition for Medicaid business
- Rebates calculated by reference to Best Price leaves open the possibility of
 - manipulation
 - errors by pharmaceutical manufacturers

Problems with current design elements

- Relying on NDC numbers results in "garbage in/garbage out"
- Paying well in advance of rebates implicates cash flow and the time value of money

Options in dealing with problematic design elements

- Retrospective
 - pursue rebate disputes
 - litigation
 - AWP
 - Best Price
- Prospective—various initiatives under way

Possible refinements of design flaws

- Selective contracting
 - just like the private sector and portions of the federal government
 - create financial incentives for pharmacies to use preferred vendors
- Negotiated prices
 - supplemental rebates
 - AMP could continue to play a role

Possible refinements of design flaws

- Assign rebate claims to pharmacies
 - reduces GIGO
 - reduces cash flow and gives states the time value of money
- Creates opportunities to
 - "mix and match"
 - create multi-state purchasing coalitions and/or
 - phased implementation

Some of the "Why" Questions

Why will a pharmaceutical manufacturer consider contracting directly?

- push the competitive button
- they recognize that the current system cannot last forever
- avoid becoming tobacco companies
- it is the lesser of the various evils

Some of the "Why" Questions

Why will the retail pharmacy lobby consider accepting an assignment of a rebate claim?

- to make more money (*i.e.*, you could split the savings with them)
- the Wal-Mart factor
- to avoid making less money (*i.e.*, lesser of two evils)

Some of the Why Questions

Why will CMS consider allowing States to contract directly and on a selective basis?

- Because the Secretary has the explicit authority under section 1927 of the Social Security Act to “authorize a State to enter directly into agreements with a manufacturer”
- Because it’s good public policy

Illustrative examples

- Consider epogen/procrit
 - two manufacturers
 - clinically identical drugs
- Consider generic amoxicillin
 - multiple manufacturers
 - currently “substitutable” drugs