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## Office of Pharmacy Affairs



(Formerly the Office of Drug Pricing)

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# Disproportionate Share Hospitals (DSH)

## Frequently Asked Questions and Forms

### Medicare Reimbursement Level and DSHs

1. Q. How do I know if my disproportionate share hospital (DSH) has Medicare reimbursement greater than 11.75?

A. You can check with your business office, or you can find out your Medicare provider number and call Kathy Kovarcik and she will look it up for you. Her number is (800) 628-6297 or (301) 594-4353.

### State or Local Government Affiliation

2. Q. My DSH has Medicare reimbursement greater than 11.75 and wants to get discounted outpatient drugs. We are either owned, operated, or granted governmental powers by State or local government. What do we need to do to get on your list of covered entities?

A. You must submit appropriate documentation of the State or local affiliation, as well as certification of non-participation in a group purchasing organization, and other required information. (See Attachment A for sample letter.)

3. Q. My DSH has Medicare reimbursement greater than 11.75 and wants to get discounted outpatient drugs. We are not owned, operated, or granted governmental powers by State or local government. What kind of contract with State or local government do we submit?

A. The contract must specifically state that the DSH will provide health care services to low income individuals who are not entitled to benefits under title XVIII, or eligible for assistance under the State plan under title XIX of the Social Security Act.

It is assumed that the contract places the DSH as acting in the public interest, in lieu of the State or local government which is doing the contracting. There must be some acknowledgement in the contract that the DSH is accepting no reimbursement or considerably less than full reimbursement for the services provided. An appropriate state or local official also must certify that the contract with the DSH for health care services to low income individuals is in the public interest. (See Attachment B for this certification.)

In Medicaid waiver states, DSHs are being reimbursed for specific covered services to covered populations. Therefore, services provided under these managed care contracts would not qualify them as DSHs eligible for 602 pricing. If there were a contract for services to those who are still uninsured, as described above, the DSH could qualify for 602 pricing.

### **Non-Participation in a Group Purchasing Organization (GPO)**

4. Q. How do I show that I will not obtain covered outpatient drugs through a GPO or other purchasing arrangement if I participate in 602 pricing?

A. An appropriate DSH official must certify that the DSH will not participate in a GPO or group purchasing arrangement for outpatient drugs while it is participating in 602 pricing. (See Attachment C for this format.)

### **Drug Diversion**

5. Q. Do I have to maintain separate inventories to show that there is no diversion of drugs purchased under Section 602?

A. We do not require separate inventories. We do suggest separate purchasing and dispensing records. You may propose alternative tracking systems to the Office of Pharmacy Affairs. Drug diversion to nonpatients of the covered entity, to ineligible entities within the same facility, and to excluded services of the entity are prohibited under Section 602. (See Federal Register Notice, "Entity Guidelines," May 13, 1994, p. 25112, Item (C)(4).)

6. Q. Can non-Medicaid patients receive 602 drugs?

A. Yes, as long as they are patients of the covered entity.

7. Q. If we use 602 discounted drugs for "own use," does that meet the prohibition against drug diversion?

A. Not necessarily. "Entity Guidelines" published in the Federal Register state "Covered entities are required not to resell or otherwise transfer outpatient drugs purchased at the statutory discount to an individual who is not a patient of the covered entity." Our interim policy on defining a patient is that the patient must have a record for medical care received at the covered entity beyond just having a prescription filled. In addition, the prescription must have been written by staff or personnel under contract to provide services to patients of the covered entity.

The definition of a patient, final notice, was published in the October 24, 1996, Federal Register, "Patient and Entity Eligibility", pages 55156-58.

8. Q. Can I get 602 prices for inpatient drugs?

A. No. Section 602 applies to outpatient drugs only.

### **Exclusion from Medicaid Rebate Program**

9. Q. I've heard that I have to let the Office of Pharmacy Affairs know my Medicaid number. What is that all about?

A. Section 602 says that a drug purchased under Section 602 shall not be subject to both a discount

under Section 602 and a Medicaid rebate under Section 1927 of the Social Security Act. A covered entity billing on a cost basis for drug purchases must provide the Office of Pharmacy Affairs with a pharmacy Medicaid number (the number which the entity uses to bill Medicaid for medications). If a covered entity does not bill Medicaid for outpatient drugs, then the entity must notify the Office of this decision. A large facility which houses many different clinics, only several of which are eligible, must obtain a separate Medicaid provider number for the eligible clinics. For those States which cannot generate additional Medicaid provider numbers for entities, covered entities must discuss an alternative arrangement with the States to accomplish this objective.

### **Billing Medicaid**

10. Q. May I continue to bill Medicaid for outpatient drugs used on Medicaid patients?

A. Yes, but you may only bill at the acquisition price plus a reasonable dispensing fee established by the State Medicaid agency. As mentioned in the previous question, the State Medicaid Agency will not be getting a manufacturer's rebate on drugs purchased under Section 602.

### **Buying Drugs Under Section 602**

11. Q. If I participate in 602 pricing, how do I go about buying drugs?

A. You continue buying through the wholesaler and/or direct from the manufacturer, the same as you have always done. (See Federal Register Notice, "Entity Guidelines", December 29, 1993, page 68924-5, Items X and XI.) Once you become eligible and participating, you should verify the entry for your institution on the bulletin board and then refer the wholesaler and manufacturers to the bulletin board to begin buying under 602.

## **SAMPLE FORMS AND LETTERS NEEDED TO BECOMING A DSH**

[Forms and letters for public hospitals \(link\)](#)

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For questions or comments, send e-mail to [opastaff@hrsa.gov](mailto:opastaff@hrsa.gov).

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