DATE:  April 30, 2013

TO:    Interested Parties

FROM:  Stefanie Nadeau, Director, MaineCare Services

SUBJECT: Proposed Rule: Maine State Services Manual Chapter 104, Section 4, Maine Part D Wrap Benefits

This rule is being proposed to retroactively amend the description of prescription drug rate changes for Maine Part D Wrap Benefits and eliminate the need to annualize changes through rulemaking. The Department pays 100% of the participant’s co-payment for generic drugs, and 50% of the participant’s co-payment for brand name drugs up to $10.00. This rule retains the same level of participants' co-payment benefit.

Rules and related rulemaking documents may be reviewed at, or printed from, the MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/index.shtml or for a fee, interested parties may request a paper copy of rules by calling (207) 287-9368. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.

A concise summary of the proposed rule is provided in the Notice of Agency Rule-making Proposal, which can be found at http://www.maine.gov/sos/cec/rules/notices.html. This notice also provides information regarding the rule-making process. Please address all comments to the agency contact person identified in the Notice of Agency Rule-making Proposal.
The Division of Policy posts all proposed and recently adopted rules on MaineCare’s Policy and Rules webpage. This website keeps the proposed rules on file until they are finalized and until the Secretary of State website is updated to reflect the changes. The MaineCare Benefit Manual is available on-line at the Secretary of State’s website.

Listed below are recently adopted rules:

Notice of Agency Rule-making Proposal

AGENCY: Department of Health and Human Services, Office of MaineCare Services

CHAPTER NUMBER AND TITLE: Chapter 104, Maine State Services Manual, Section 4, Maine Part D Wrap Benefits

PROPOSED RULE NUMBER:

CONCISE SUMMARY: This rule is proposed to permanently adopt the provisions now in place by emergency rule that eliminate coverage of Medicare Part D copayments for members of the Medicare Savings Program who are not eligible for, or receiving the full MaineCare benefit. This change is being made pursuant to PL 2013, Chapter 368, Part A, Section A-34, the Maine Biennial Budget.


PUBLIC HEARING:

Date: September 23, 2013
Time: 1:00
Location: 111 Sewall Street,
Cross Office Building, Room 104
Augusta, Maine 04330

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed above before September 16, 2013.

DEADLINE FOR COMMENTS: Comments must be received by midnight October 3, 2013.

AGENCY CONTACT PERSON: Ann O'Brien, Comprehensive Health Planner II
AGENCY NAME: MaineCare Services
ADDRESS: 242 State St.
11 State House Station
Augusta, Maine 04333-0011
Ann.Obrien@maine.gov

TELEPHONE: 207-287-5505 FAX: (207) 287-9369
TTY: 711 (Deaf or Hard of Hearing)
Is your mailing address up to date with MaineCare? Please keep MaineCare up to date so your Remittance Statements and checks arrive on time. Call Provider Enrollment at 1-866-690-5585.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
10-144 Chapter 104
MAINE STATE SERVICES MANUAL

SECTION 4
MAINE PART D WRAP BENEFITS

ESTABLISHED 1/1/06
LAST UPDATED 4/4/10

4.01 AUTHORITY

This benefit is authorized by, and these regulations are issued under, the authority of 22 M.R.S.A. § 254-D. The Commissioner of the Department of Health and Human Services has delegated the responsibility for administration of the benefit to the Office of MaineCare Services.

4.02 DEFINITIONS

4.02-1 Authorized Representative refers to the Department’s authority pursuant to 22 M.R.S.A. § 254-D to enroll and reenroll participants into a Medicare Part D plan, apply for Medicare Part D benefits and subsidies on their behalf, and at the Department’s discretion, file exceptions and appeals on their behalf. The Department may also identify a designee for this function.

4.02-2 Beneficiary under Medicare Part D means a person who is eligible for benefits and enrolled in a Medicare Part D plan.

4.02-3 Brand Name Drug is defined as a single-source drug, a cross-licensed drug, or an innovator drug.

4.02-4 Covered Drug is a drug for which the Department reimburses under this benefit. See Subsection 4.05 and Appendix A of this Section.

4.02-5 Generic Drugs are drugs other than those defined as brand-name drugs.

4.02-6 Mail Order Pharmacy is a pharmacy provider that dispenses prescription medications by U.S. mail or private carrier. Mail order pharmacies must have a NABP (National Association of Boards of Pharmacy) provider number uniquely identifying the provider as a mail order pharmacy for purposes of billing. Mail order pharmacies must be licensed by the Maine Board of Pharmacy, enrolled as Medicare and MaineCare providers, and be operating under contract with the Department. Mail order pharmacies must dispense prescription medications from within the United States. Mail order pharmacies must process claims through the State’s electronic claims processing system to the standards required by the Department.

4.02-7 MaineCare Benefits Manual (MBM) is the MaineCare policy set forth in Department of Health and Human Services, 10-144, Chapter 101, MaineCare Benefits Manual.

4.02-8 MaineCare Member means a person who receives benefits under the MaineCare Program.

4.02 DEFINITIONS (cont.)

4.02-10 Medicare Part D Excluded Drugs are those drugs not covered by Medicare Part D pursuant to Title XIX, Section 1927 of the Social Security Act [42 U.S.C. § 1396r-8], for which the Department will continue to reimburse if otherwise covered under this Section. The Department will post a complete list of these covered drugs on its designated website, and the list will include but not be limited to the following categories of drugs: over the counter drugs, certain weight loss drugs, agents when used for the symptomatic treatment of cough and cold, vitamins/minerals, outpatient drugs for which associated tests or monitoring must be purchased exclusively from manufacturers, barbiturates, and benzodiazepins.

4.02-11 Medicare Savings Program Eligible refers to a participant who is also eligible for MaineCare through the Medicare Buy-In Program, as defined in the MaineCare Eligibility Manual (MEM) and designated as QMB, SLMB, or QI.

4.02-12 National Drug Code (NDC) is a universal drug coding system for human drugs established by the Federal Food and Drug Administration, as set forth in 21 C.F.R § 207. The FDA assigns each drug a unique identification number specifying the labeler/vendor, product, and package.

4.02-13 Non-Preferred Drugs are covered drugs that are not preferred drugs.

4.02-14 OBRA 90 is the Omnibus Budget Reconciliation Act of 1990 as amended.

4.02-15 Over-The-Counter Drug (OTC) is a drug that can be purchased without a prescription.

4.02-16 Participant is an individual who is eligible for and is receiving this benefit.

4.02-17 Pharmacy Provider is a corporation, association, partnership, or individual that either provides pharmacy services pursuant to a provider agreement with MaineCare or is related by ownership or control to an entity that provides MaineCare or DEL Benefit services, and is also a Medicare pharmacy provider.

4.02-18 Preferred Drugs are covered drugs that are clinically efficacious and which have a lower therapeutic category as determined by the Department after reviewing the recommendation of the Drug Utilization Review Committee.

4.02-19 Preferred Drug List (PDL) is a listing of covered drugs setting forth such information as their status as preferred or non-preferred, whether prior authorization may be required, step order, and any other information as determined by the Department to be helpful to participants, pharmacists, prescribers and other interested parties. This benefit utilizes the PDL referenced in Chapter 104, Section 2, Drugs for the Elderly.
DEFINITIONS (cont.)

4.02-20 Prescription Drug Plan (PDP) is a Medicare Part D plan provider that is also an approved contractor under contract with the DHHS.

4.02.21 Retail Pharmacy is a pharmacy that possesses a valid outpatient pharmacy license issued by the Board of Pharmacy, accepts Medicare assignment, and which serves DEL participants.

4.02-22 Therapeutic Category is a grouping of drugs by comparable therapeutic effect, as determined by the Department.

4.02-23 Usual & Customary Charge is the amount a pharmacy charges to individuals for prescription drugs for which those individuals do not have insurance coverage.

4.02-24 Wrap Benefits are benefits offered through this Section that may include assistance with co-payments, deductibles, premiums and gaps in coverage. Wrap benefits vary for some members, and details of the benefit are outlined in the table in Appendix A.

ELIGIBILITY

An individual is eligible to receive services as set forth in this Section if he or she meets the eligibility requirements established in 10-144 C.M.R. Chapter 333, and adheres to the additional requirements outlined below. Some participants may have restrictions on the type and amount of benefits they are eligible to receive under this Section.

The Department will enter enrolled participants into its electronic database. Entry into the Department’s electronic database may occur in one of three ways:

1. Auto-enrollment whereby the Department automatically enrolls the participant into an approved PDP and enters the participant into the Department’s database; or

2. Self-enrollment by the participant into an approved PDP. Participants who self enroll must communicate their enrollment to the Department, at which time the Department will confirm the information and enter the participant into its database. Providers should inform participants to call the Department’s toll free help line at 1-866-796-2463 to report self-enrollment; or

3. If the Centers for Medicare and Medicaid Services (CMS) enrolls Medicare Savings Program (MSP) participants into an approved PDP.

DEL and Part-D eligible MaineCare members can receive wrap benefits through any CMS approved PDP.
PARTICIPATION IN MEDICARE PART D WRAP BENEFITS

Participants must exhaust other pharmacy benefits including Medicare Part D and MaineCare before using benefits under this Section.

4.04-1 Authorized Representative

The Department may act as an authorized representative for or appoint a designee to act as an authorized representative for participants who are eligible for Medicare Part D.

As an authorized representative, the Department may:

a. deem eligible and enroll and reenroll participants in a Medicare Part D plan;

b. apply for Medicare Part D benefits and subsidies on behalf of enrollees;

c. establish rules by which enrollees may opt out of participation in Medicare Part D; and

d. at its discretion, file exceptions and appeals pertaining to Medicare Part D eligibility or benefits on behalf of enrollees.

4.04-2 Coverage of Drugs Excluded from Coverage Under Medicare Part D

For participants who are eligible for Medicare Part D, the Department may provide coverage of drugs excluded by Medicare Part D to the same extent that coverage is available to participants who are not eligible for Medicare Part D.

4.05 BENEFITS

As detailed in Chapter 104, Section 2, the DEL benefit is limited to drugs of manufacturers that have both a valid rebate agreement with the federal government pursuant to 42 U.S.C. § 1396r-8 and a DEL Rebate Agreement. The Maine Part D Wrap Benefit additionally allows coverage of drugs of manufacturers that may not have both a valid DEL and federal rebate agreement. Drugs may be subject to prior authorization and the step order as set forth in Chapter 104, Section 2. The Department may refuse coverage for a drug when the prescriber cannot demonstrate medical necessity.

4.05-1 Covered Benefits

See the chart in Appendix A for a summary of Covered Benefits under this Section.

4.05-2 Prior Authorization (PA)

The Department may require prior authorization for certain drugs in this benefit, and follows guidelines as set forth in Chapter 104, Section 2.
4.05 BENEFITS (cont.)

4.05-3 Preferred Drug List

In order to facilitate appropriate utilization, the Department utilizes the Preferred Drug List as detailed in Chapter 104, Section 2.

4.06 DISPENSING PRACTICES

Retail pharmacy providers may dispense up to a 34-day supply of brand name drugs and up to a 90-day supply of generic drugs.

Drugs must be dispensed according to guidelines detailed in Chapter 104, Section 2.

4.07 FINANCIAL PARTICIPATION (CO-PAYMENT)

The Department requires each participant to pay a co-payment for drugs, as set forth in the chart in Appendix A. There are no exceptions. If the participant refuses to pay the co-payment, the pharmacy will deny the service.

4.08 ELIGIBILITY LETTER

The Department of Health and Human Services issues an eligibility card to each eligible participant enrolled in this benefit. A participant must present the eligibility card to the participating pharmacy upon request.

4.09 AMOUNT AND DURATION OF BENEFITS

The Department may stop reimbursing for covered drugs if, in any fiscal year, all the funds appropriated for this benefit have been expended. The Department will provide participants and participating pharmacies with prior notice of the date upon which reimbursement will cease.

4.10 REIMBURSEMENT

The Department will reimburse participating pharmacies only for drugs that are covered drugs as set forth in MaineCare Benefits Manual, Chapter 101, Chapter II, Section 80, Pharmacy Services, or in Maine State Services Manual, Chapter 104, Section 2, Drugs for the Elderly Benefit. This benefit is the payor of last resort. If the participant has another prescription drug coverage plan, that plan must be billed first.

4.11 APPEALS

Each participant has the right to an administrative hearing to appeal any decision by the Department that adversely affects that participant’s benefit. These appeal rights are set forth in Chapter 104, Section 1.
BILLING INSTRUCTIONS

Participating pharmacies must bill in accordance with the Department’s billing instructions set forth in the pharmacy’s MaineCare agreement.
### Appendix A- MAINE PART D WRAP BENEFITS COVERAGE CHART

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<th>Gap</th>
<th>Excluded Drugs*</th>
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<td>Dual Eligibles Residing in Nursing Facilities</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Covered as reimbursed under MaineCare Benefits Manual, Chapter II, Section 80 Pharmacy Services</td>
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<tr>
<td>Dual Eligibles residing in Assisted Living and Level I, II, III and IV PNMI Eligibles (as reimbursed under MaineCare Benefits Manual, Chapter III, Appendices C and F, Section 97, Private Non-Medical Institution Services), or who are co-pay exempt under Chapter 1, Section 1.09-2 of the MaineCare Benefits Manual.</td>
<td>100% of all co-payments</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Covered as reimbursed under MaineCare Benefits Manual, Chapter II, Section 80 Pharmacy Services</td>
</tr>
<tr>
<td>All other Dual Eligibles</td>
<td>50% of the cost of Brand Name drugs with a cap of $10 per prescription, and 100% of the cost of generics up to $2.50.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Covered as reimbursed under MaineCare Benefits Manual, Chapter II, Section 80 Pharmacy Services</td>
</tr>
<tr>
<td>Medicare Savings Program DEL Eligibles (QMB, SLMB, QI)</td>
<td>50% of the cost of Brand Name drugs with a cap of $10 per prescription, and up to $2.50 per generic.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Covered as paid under Chapter 104, Section 2, DEL Policy</td>
</tr>
<tr>
<td>DEL members eligible for Medicare Part D</td>
<td>50% of the cost of Brand Name drugs with a cap of $10 per prescription, and up to $2.50 per generic. Not Covered</td>
<td>100% of Part D Premiums</td>
<td>50% of the Part D deductible</td>
<td>Members will have co-pay of 20% plus $2.</td>
<td>Covered as paid under Chapter 104 DEL Policy</td>
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*Please see the following website for a list of covered Part D excluded drugs: [www.mainecarepdll.org](http://www.mainecarepdll.org) (under “General Pharmacy Info”)