

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 4T20
Atlanta, Georgia 30303-8909



September 23, 2010

Elizabeth A. Johnson
Commissioner
Department of Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621

Re: Kentucky Title XIX State Plan Amendment, Transmittal #10-004

Dear Ms. Johnson:

This is a follow up to the approval letter that you should have received from Mr. Larry Reed, Director, Division of Pharmacy, and Centers for Medicare and Medicaid Services, dated September 20, 2010. Enclosed is a copy of the approval letter, the signed HCFA-179 and the approved plan pages.

The effective date of this amendment is July 1, 2010.

Sincerely,

//s//

Jackie Glaze
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosures

Department of Health & Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid, CHIP and Survey & Certification
Disabled and Elderly Health Programs Group

September 20, 2010

Elizabeth A. Johnson
Commissioner
Department of Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621

Dear Ms. Johnson:

We have reviewed Kentucky State Plan Amendment (SPA) 10-004, Prescribed Drugs, received in the Regional Office on July 2, 2010. This amendment changes the prescription early refill time frame from 80 percent to 90 percent of the prior prescription having been utilized. However, in the case of an emergency, recipients may obtain a refill earlier if the prescribing physician or dispensing pharmacy submits a prior authorization by phone or fax. Medicaid recipients residing in a long-term care facility or personal care home will be exempt from the 90 percent requirement and will be allowed a refill at 80 percent of the prior prescription being utilized.

We are pleased to inform you that the amendment is approved, effective July 1, 2010. In addition, per your August 10, 2010 email, we made the requested changes to block seven on the HCFA-179 form.

A copy of the HCFA-179 form, as well as the pages approved for incorporation into the Kentucky state plan, will be forwarded by the Atlanta Regional Office. If you have any questions regarding this amendment, please contact Wendy Tuttle at (410) 786-8690.

Sincerely,

/s/

Larry Reed
Director
Division of Pharmacy

cc: Jackie Glaze, ARA, DMCHO, Atlanta Regional Office
Maria Donatto, Atlanta Regional Office
Laura Killebrew, Atlanta Regional Office

- (c) A drug for which the drug manufacturer has not entered into or has not complied with a rebate agreement in accordance with 42 USC 1396r-8(a) unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the non-rebated drug. Note: Because federal financial participation is not generally available for a non-rebated drug, state funds will be used to cover such drugs if necessary to protect the health of a Medicaid recipient and no other appropriate options exist;
 - (d) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program;
 - (e) A drug used to treat sexual or erectile dysfunction, unless the drug is FDA approved to treat a condition other than sexual or erectile dysfunction. (This provision is effective 01-01-06); and
 - (f) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service. However, a legend drug may be provided through prior authorization to a recipient admitted to an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.
- (4) A patient “locked-in” to one pharmacy due to over-utilization may receive pharmacy services only from his/her lock-in provider except in the case of an emergency or by referral.
- (5) If authorized by the prescriber, a prescription for a controlled substance in Schedule III-V may be refilled up to five times within a six month period from the date the prescription was written or ordered; a noncontrolled substance may be refilled up to 11 times within a 12 month period from the date the prescription was written or ordered. In addition, a prescription fill for a maintenance drug shall be dispensed in a 92-day supply if a recipient has demonstrated stability on the maintenance drug. However, a 92-day supply of a maintenance drug shall not be dispensed if a prescribing provider specifies that the quantity should be less. Also, individuals receiving supports for community living services shall not be subject to the 92-day supply requirement.
- (6) Kentucky will cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions, per recipient per month. If a physician provides sufficient information that a medical need exists for a Medicaid member to receive more than four prescriptions or more than three brand name drug prescriptions in a one-month period, an exception to the four-script limit or three brand allowance will be allowed.
- (7) A refill of a prescription shall not be covered unless at least 90 percent of the prescription time period has elapsed. However, a refill may be covered before 90 percent of the prescription time period has elapsed if the prescribing provider or dispensing pharmacy submits a prior authorization request by phone or fax. Medicaid recipients residing in a long-term care facility or personal care home will be exempt from the 90 percent requirement and will be allowed a refill at 80 percent of the prescription time period having elapsed.
- (8) Supplemental Rebate Program:
The state is in compliance with Section 1927 of the Social Security Act. The state has the following policies for the Supplemental Rebate Program for the Medicaid population:
- (a) CMS has authorized the Commonwealth of Kentucky to enter into the Michigan multi—state pooling agreement (MMSPA) also referred to as the National Medicaid Pooling Initiative (NMPI) for drugs provided to Medicaid beneficiaries. The NMPI Supplemental Rebate Agreement (SRA) and the Amendment to the SRA submitted to CMS on January 6, 2005 have been authorized for pharmaceutical manufacturers’ existing agreements through their current expiration dates. The updated NMPI SRA submitted to CMS on March 11, 2008 has been authorized for renewal and new agreements with pharmaceutical manufacturers for drugs provided to Medicaid beneficiaries.

- (c) A drug for which the drug manufacturer has not entered into or has not complied with a rebate agreement in accordance with 42 USC 1396r-8(a) unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the non-rebated drug. Note: Because federal financial participation is not generally available for a non-rebated drug, state funds will be used to cover such drugs if necessary to protect the health of a Medicaid recipient and no other appropriate options exist;
 - (d) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program;
 - (e) A drug used to treat sexual or erectile dysfunction, unless the drug is FDA approved to treat a condition other than sexual or erectile dysfunction. (This provision is effective 01-01-06); and
 - (f) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service. However, a legend drug may be provided through prior authorization to a recipient admitted to an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.
- (4) A patient “locked-in” to one pharmacy due to over-utilization may receive pharmacy services only from his/her lock-in provider except in the case of an emergency or by referral.
- (5) If authorized by the prescriber, a prescription for a controlled substance in Schedule III-V may be refilled up to five times within a six month period from the date the prescription was written or ordered; a noncontrolled substance may be refilled up to 11 times within a 12 month period from the date the prescription was written or ordered. In addition, a prescription fill for a maintenance drug shall be dispensed in a 92-day supply if a recipient has demonstrated stability on the maintenance drug. However, a 92-day supply of a maintenance drug shall not be dispensed if a prescribing provider specifies that the quantity should be less. Also, individuals receiving supports for community living services shall not be subject to the 92-day supply requirement.
- (6) Kentucky will cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions, per recipient per month. If a physician provides sufficient information that a medical need exists for a Medicaid member to receive more than four prescriptions or more than three brand name drug prescriptions in a one-month period, an exception to the four-script limit or three brand allowance will be allowed.
- (7) A refill of a prescription shall not be covered unless at least 90 percent of the prescription time period has elapsed. However, a refill may be covered before 90 percent of the prescription time period has elapsed if the prescribing provider or dispensing pharmacy submits a prior authorization request by phone or fax. Medicaid recipients residing in a long-term care facility or personal care home will be exempt from the 90 percent requirement and will be allowed a refill at 80 percent of the prescription time period having elapsed.
- (8) Supplemental Rebate Program:
The state is in compliance with Section 1927 of the Social Security Act. The state has the following policies for the Supplemental Rebate Program for the Medicaid population:
- (b) CMS has authorized the Commonwealth of Kentucky to enter into the Michigan multi—state pooling agreement (MMSPA) also referred to as the National Medicaid Pooling Initiative (NMPI) for drugs provided to Medicaid beneficiaries. The NMPI Supplemental Rebate Agreement (SRA) and the Amendment to the SRA submitted to CMS on January 6, 2005 have been authorized for pharmaceutical manufacturers’ existing agreements through their current expiration dates. The updated NMPI SRA submitted to CMS on March 11, 2008 has been authorized for renewal and new agreements with pharmaceutical manufacturers for drugs provided to Medicaid beneficiaries.

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL	1. TRANSMITTAL NUMBER: 10-004	2. STATE Kentucky
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
FOR: HEALTH CARE FINANCING ADMINISTRATION	4. PROPOSED EFFECTIVE DATE 7/1/2010	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 42 C.F.R. 430,431, 440, 447	7. FEDERAL BUDGET IMPACT: a. FFY 2010 - (\$2.7 Million) b. FFY 2011 - (\$2.7 Million)
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 3.1-A, Page 7.5.2 Attachment 3.1-B, Page 31.1	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Same

10. SUBJECT OF AMENDMENT

This State Plan Amendment will prevent Medicaid recipients from refilling a prescription until 90% of the prior fill has been utilized. However, in the case of an emergency, recipients may obtain a refill earlier if the prescribing physician or pharmacy submits a prior authorization.

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED: Review delegated
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED to Commissioner, Department for Medicaid
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL Services

12. SIGNATURE OF STATE AGENCY OFFICIAL: //s//	16. RETURN TO: Department for Medicaid Services 275 East Main Street 6W-A Frankfort, Kentucky 40621
13. TYPED NAME: Elizabeth A. Johnson	
14. TITLE: Commissioner, Department for Medicaid Services	
15. DATE SUBMITTED: 07/01/14	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 07/02/10	18. DATE APPROVED: 09/16/10
PLAN APPROVED – ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: 07/01/10	20. SIGNATURE OF REGIONAL OFFICIAL: //s//
21. TYPED NAME: Jackie Glaze	22. TITLE: Associate Regional Administrator Division of Medicaid & Children Health Opns.

23. REMARKS:

Approved with the following changes to item 8as authorized by State Agency dated 08/10/10.

Block # 7a changed to read: FFY 2010 \$675 Million