MMA "Clawback" Issues for State Medicaid Programs

What We Know & Don't Know

1. We Know States must pay for all dual eligibles enrolled in Part D

- Duals who opt out of Part D WILL NOT be a state responsibility.
- Clawback amount will be calculated based on member months.

A. Managed Care Enrollees

- **We Know** that State contributions for managed care enrollees will be the actuarial equivalent.
- **We Don't Know** exactly how this calculation will be made. CMS is looking for input from states.

B. Information Systems & Reporting

We Know that an accurate count is needed of people in various dual eligible categories:

QMB	QDWI
QMB Plus*	QI-1
SLMB	QI-2
SLMB Plus*	Full dual eligibles *

* Categories of eligibility with Medicaid Rx benefits. These enrollees will be included in the calculation of state contributions.

Deadlines in 5/6/04 State Medicaid Director letter:

June 15 – submit analysis of dual eligible reporting discrepancies, including proposed corrective action, and identify state contact person.

- 42 states sent contact information.
- 13 sent analyses.

July 15 – submit initial Medicaid Statistical Information System (MSIS) replacement eligibility file for 1st Qtr FFY2003.

- CMS has said this remains a FIRM deadline, but is willing to have individual state discussions.
- Goal is to make sure that states aren't systematically miscoding dual eligibles.

August 16 – submit final approved MSIS replacement eligibility file for 1st Qtr FFY03

September 15 – submit all remaining MSIS eligibility files for CY2003.

December 31 – all MSIS eligibility and claims files must be accepted and up to date. States must transition reporting from quarterly to monthly.

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2. Drugs Excluded from Part D Coverage - <u>What We Know</u> :

- Certain drugs (that may be a covered Medicaid benefit) will be excluded from the 2003 baseline
- CMS determinations will be made on their file of 100,000 individual (NDC level) drugs
- Approximately 50% are covered Part D drugs that will be included in the baseline
- Approximately 45% are excluded because they are over-the-counter
- Approximately 5% are excluded because they are in drug categories that are optional for state Medicaid coverage (cosmetic, benzodiazepines, fertility, etc.)
- Medicare Part B Drugs are excluded:
    - Transplant drugs
    - Oral chemotherapy
    - Injectable drugs administered in physician offices
- The excluded drug file will be sent from the CMS Medicaid Division to the CMS Medicare Division for approval. Date this will be available to states is still unclear.

Drugs Excluded from Part D - <u>What We Don't Know</u>

- Status of Part B-covered drugs for patients in Long Term Care Facilities (e.g. injectables that would normally be provided in a physician's office). CMS's expectation is that few of these drugs were covered by Medicaid, but many states do not currently require providers to bill Medicare for these drugs.
- These states want to exclude these Medicare Part B covered drugs from the calculation.
- CMS has asked states to submit more information.

3. Issues Of Significant Importance Requiring More State Advocacy

<u>Concerns Re: 2003 as the Ongoing Baseline for Calculating PM/PM</u>

- Many states implemented cost containment mechanisms in 2003 which would not have realized cost savings until later years. This is especially true with pharmacy strategies such as rebates and preferred drug lists. Federal and supplemental rebates accrued in 2003 may not have been collected until 2004. Using 2003 realized dollars as the only base year into perpetuity will overestimate states' final costs of dual eligibles.
- CMS staff have said they have limited flexibility to consider later years or to rebase.

<u>Inflation adjustment from 2003 to 2006 for Clawback</u>

- Calculation is to be based on National Health Expenditures projections. CMS is still unclear on which NHE projection would be used - total, third party, public, Medicaid.
- The Medicaid projection may be more appropriate to use for this purpose. The result of choosing an inappropriate projection would be overpayments by the states.