



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

APR 24 2006

*Administrator*  
Washington, DC 20201

Ms. Ann Lefert  
National Alliance of State and Territorial AIDS Directors  
444 North Capitol Street, NW, Suite 339  
Washington, DC 20001

Dear Ms. Lefert:

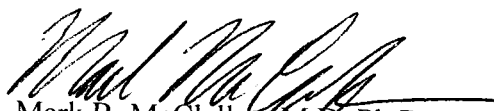
Thank you for your letter urging the Centers for Medicare & Medicaid Services (CMS) to allow expenditures by State-operated AIDS Drug Assistance Programs (ADAPs) to count toward true out-of-pocket (TrOOP) costs under the Medicare prescription drug benefit. I appreciate your attention to this matter and assure you we continue to keep the interests of beneficiaries with HIV/AIDS in mind as we implement the Medicare prescription drug benefit.

As you are aware, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) excluded from TrOOP costs any coverage provided by "insurance or otherwise" that supplements the benefits available under Medicare prescription drug coverage. Our regulations implementing the Medicare prescription drug program include in the definition of "insurance or otherwise" any Government-funded health programs, such as ADAPs. Although we discussed with you the possibility of reinterpreting our regulations so as to allow ADAP wrap-around payments to count toward TrOOP, we believe our regulations appropriately implement congressional intent.

Congress was very specific regarding entities or individuals whose cost-sharing assistance on covered Part D drugs would count toward TrOOP, and it explicitly designated State pharmaceutical assistance programs (SPAPs) as entities whose assistance with cost-sharing would count toward TrOOP. Congress did not specifically designate other Government-funded health programs as entities whose cost-sharing assistance on behalf of Medicare prescription drug plan enrollees would count toward TrOOP. We believe CMS defined the term "insurance or otherwise" consistent with Congress' intent to reduce incentives for current employers, other insurers, and Government programs to lower their current levels of coverage and shift costs to the Medicare program.

I appreciate you bringing this matter to my attention. Please know we value the critical role that ADAPs play in providing needed financial assistance on drug costs for people living with HIV/AIDS. I look forward to continuing to work with you as we implement this landmark legislation.

Sincerely,



Mark B. McClellan, M.D., Ph.D.

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572538  
October 18, 2005

Dr. Mark McClellan  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, SW  
Room 314-G  
Washington, D.C. 20201

Dear Dr. McClellan:

We the undersigned organizations are writing to express our support for allowing expenditures from state-operated AIDS Drug Assistance Programs (ADAPs) to count towards True-out-of-pocket costs (TrOOP) under the Medicare Part D benefit. We are national, local, and regional HIV/AIDS organizations representing people living with HIV/AIDS, medical providers, advocates, community-based organization and program administrators, as well as members of the diagnostics and pharmaceutical industry. We appreciate the level of consideration that the Centers for Medicare and Medicaid Services (CMS) has given to people living with HIV/AIDS in the promulgation of rules for the benefit.

We understand that CMS is discussing policy changes that would reinterpret the calculation of TrOOP. During the regulatory process many of the same organizations shared their concerns about the regulation that explicitly excludes ADAPs from being able to provide wrap-around coverage in a manner that would allow beneficiaries to reach the catastrophic limit. This rule seriously undermines the federal government's priority of providing comprehensive health care to people living with HIV/AIDS. As you are aware, ADAPs are an integral component of the safety net for people living with HIV/AIDS in this country and have a long history of filling coverage gaps left by other Federal programs, including Medicaid and Medicare. We urge you to reconsider your initial ruling and include ADAPs in the list of programs whose expenditures count towards TrOOP.

ADAPs are a successful state-federal partnership, with 40 states contributing over \$226 million in state general revenue funds in FY2004. The undersigned organizations agree that all dollars, both state and federal, expended by ADAPs should count towards TrOOP, however, we understand that allowing state dollars only would not require a legislative change. We feel it is unfair to single out state dollars used to provide medications to people living with HIV/AIDS while at the same time allowing state dollars to be used for State Pharmaceutical Assistance Programs' (SPAPs) expenditures on behalf of a beneficiary. States should be encouraged, not discouraged, from helping people participate more fully in the new Medicare drug benefit. Encouraging one type of state funding for this help while denying another type of state funding for help makes neither legal nor fiscal sense. ADAPs are able to separate their federal and state dollars and can provide a clear picture of what state dollars are purchasing. Federal policy should not create a disincentive for states to wrap-around the Medicare Part D benefit.

We thank you for your attention to this matter. We greatly appreciate the attention CMS has paid to people living with HIV/AIDS during the implementation of Medicare Part D. If you

have any questions please contact Ann Lefert, Manager of Government Relations at the National Alliance of State and Territorial AIDS Directors at (202) 434-8090.

Sincerely,  
AID Atlanta  
AIDS Action Baltimore  
AIDS Action Council  
AIDS Action in Mississippi  
AIDS Action Project NorthWest (AAPNW)  
AIDS Alabama  
AIDS Consultation Service, Maine Medical Center  
AIDS Foundation of Chicago  
AIDS Healthcare Foundation  
AIDS Housing Association of Tacoma  
AIDS Law Project of Pennsylvania  
AIDS Project Los Angeles  
AIDS Services for the Monadnock Region  
AIDS Services of Austin  
AIDS Survival Project  
American Academy of HIV Medicine  
Arizona AIDS Policy Alliance  
Birmingham AIDS Outreach  
Central City AIDS Network, Inc.  
Community HIV/AIDS Mobilization Project/CHAMP  
Community Information Center, Inc.  
Eastern Maine AIDS Network  
Gay Men's Health Crisis  
Georgia ADAP Task Force  
GlaxoSmithKline  
Health Services Center, Inc.  
HIVictorius, Inc.  
HIV Care Directions  
HIV Council of Oregon and SW Washington  
HIV Medicine Association  
HIV/AIDS Services for African Americans in Alaska  
Housing Works  
Hyacinth AIDS Foundation  
Lifelong AIDS Alliance  
MGHA Ryan White Title III Program  
Maine HIV Advisory Committee  
Maine Public Health Association  
Michigan HIV/AIDS Council  
Michigan Positive Action Coalition (MI-POZ)  
Mobile AIDS Support Services  
Nashville CARES  
National ADAP Working Group

The National Alliance of State and Territorial AIDS Directors  
National Association of People with AIDS  
The National Health Law Program  
New Mexico POZ Coalition/NMPWAs  
National Minority AIDS Council  
Northern Colorado AIDS Project  
Northern Kentucky District Health Department Community Health Promotion  
Phoenix Shanti Group  
Pierce County AIDS Foundation  
Project Inform  
Roche  
Ryan White Title II Advisory Committee  
San Francisco AIDS Foundation  
Save ADAP Committee/AIDS Treatment Activists Coalition  
Southern AIDS Coalition  
Spokane AIDS Network  
Title II Community AIDS National Network (THCANN)  
Topeka AIDS Project  
Treatment Access Expansion Project

cc: Leah Kegler, Special Assistant to the Director, Medicare Outreach, CMS  
Dan Schreiner, Medicare Ombudsman, CMS  
Carol Kelly, Director, Office of Policy, CMS  
Dennis Smith, Director, Center for Medicaid and State Operations, CMS  
Michael McMullan, Deputy Director for Beneficiary Services, CMS  
Gary Bailey, Deputy Director for Plan Policy and Operations  
Philo Hall, Chief of Staff to the Acting Assistant Secretary of Health, HHS  
Marty McGeein, Acting Deputy Assistant Secretary, Office of the Assistant Secretary for  
Planning and Evaluation, HHS  
Mary Vienna, Division of Training and Technical Assistance, HIV/AIDS Bureau  
Senator Gordon Smith  
Senator Jeff Bingaman