



CMS Issues Additional Guidance on Rebate Adjustments for the RDS Program

Recent CMS guidance clarifies that the requirement that plan sponsors report rebates retained by a Pharmacy Benefit Manager applies only to RDS applications with plan years starting on or after January 1, 2007.

Background

Under the retiree drug subsidy program (RDS program) established by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, employers providing prescription drug coverage to qualified retirees receive a 28% tax-free subsidy from the government for allowable prescription drug costs incurred by those retirees. Allowable costs are reduced by any discounts, rebates or similar price concessions.

One of the more contentious issues concerning the adjustment for rebates has been rebates retained by the pharmacy benefit manager (PBM) or carrier and not passed on to the plan sponsor. CMS has consistently taken the position that allowable costs must be reduced by all rebates – including rebates retained by the PBM or carrier. However, recent [CMS guidance](#) states that retained rebates do not need to be reflected for RDS applications with plan years starting before January 1, 2007.

CMS Guidance on Rebates

To collect the subsidy under the RDS program, plan sponsors must report the allowable retiree costs (ARC) on a retiree-by-retiree basis. ARC must be reduced by discounts, rebates or similar price concessions, and ARC cannot include any administrative fees.

On July 23, 2007, CMS released guidance (See our August 23, 2007 [For Your Information](#)) stating that for plan years starting on and after July 1, 2006, employers must report all rebates – including both those paid to the plan sponsor and those retained by the PBM. The guidance further stated that for plan years beginning before July 1, 2006, the plan sponsor "...may make a reasonable good faith estimate of the manufacturer rebates retained by the PBM, using a reasonable accounting or actuarial methodology, with such estimate reflected in the calculation of ARC."

Since the July 23, 2007 guidance, CMS has released additional guidance that seemed to indicate that rebates retained by the PBM did not have to be reported for plan years beginning before July 1, 2006. However, the CMS guidance was not interpreted consistently by all PBMs and plan sponsors.

On June 6, 2008, CMS issued additional guidance that "... modifies that [July 23, 2007] guidance by specifying that the requirements to report rebates retained by a Pharmacy Benefit Manager applies only to RDS applications with plan years starting on or after January 1, 2007."

BUCK COMMENT. *The clarification that retained rebates do not need to be reported for applications with plan years starting before January 1, 2007 is welcome news for employers. Not having to report those retained rebates will increase the RDS amounts paid to plan sponsors. It also helps to address the difficulty some plan sponsors have had in having retained rebates included in their cost reports, particularly where an insurance carrier is administering the prescription drug plan but subcontracts prescription drug services to a PBM, or where a small number of retirees are included in the plan.*

The expansion of this rebate exclusion to applications starting before January 1, 2007 is also welcome news for non-calendar year plans that previously had to report retained rebates.

The guidance also includes new examples on how to report retained rebates for plan years starting on and after January 1, 2007.

Conclusion

A plan sponsor whose final CMS reconciliation report is due by June 30, 2008 has little time to make any changes in its current cost report if the PBM has already included retained rebates. In cases where an employer has had difficulty in obtaining retained rebates, this CMS guidance eliminates the need for reporting those rebates for the 2006 applications. However, for plan years starting on and after January 1, 2007, plan sponsors will be required to report all retained rebates and will need to work with their carriers and PBMs to ensure this requirement is satisfied.

Buck's consultants would be pleased to discuss this CMS guidance with you as well as any other issues in connection with the RDS program.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.