



## Medicaid Rebates for Dual Eligibles<sup>1</sup>

The Medicaid drug rebate program was enacted in 1990 in response to Congressional concerns about rapid increases in Medicaid prescription drug spending. The program requires manufacturers to pay rebates based on the discounts then offered to certain large purchasers, as well as beneficiary utilization. In order for their products to be covered, manufacturers were essentially required to sell their products to Medicaid at the “best price” secured by other purchasers. Even at the time of the original law’s passage, there were concerns raised that in order to compensate for these rebates, manufacturers would increase prices to purchasers that previously received large discounts. There is strong evidence that this market dynamic did emerge; instead of extending price discounts negotiated by certain payers to Medicaid, manufacturers have simply raised overall prices for everyone.

**AMCP Position:** AMCP is opposed to efforts to apply Medicaid rebates to dual eligibles who are currently covered under Medicare Part D. AMCP believes that the Medicaid rebate program as it is currently structured acts as a price floor and leads to higher prices for all payers. To expand the number of patients to which the rebate applies will only exacerbate the problem.

- **Medicaid rebates have had a negative impact on prices for all payers**  
Studies by the Government Accountability Office (GAO)<sup>2</sup> and Congressional Budget Office (CBO)<sup>3</sup> have documented price increases for private payers such as health maintenance organizations, health systems and group purchasing organizations, as well as public payers such as the Department of Veterans’ Affairs (VA) and the Department of Defense (DoD) following the institution of the rebate program in 1990. These price increases are not explained by general inflation, or other factors such as utilization alone. It is instructive to note that when prices negotiated by certain federal entities, such as the VA and DoD, have subsequently been exempted from rebate calculations, those entities have been successful at negotiating lower prescription drug costs once again.

<sup>1</sup> See AMCP’s *Where We Stand* position statement on the Best Price Requirements of the Medicaid Prescription Drug Rebate Program, available online at: <http://www.amcp.org/Tertiary.aspx?id=8727>.

<sup>2</sup> GAO, *Medicaid: Changes in Best Price for Outpatient Drugs Purchased by HMOs and Hospitals* (GAO/HEHS-94-194FS, Aug. 5, 1994), available online at <http://archive.gao.gov/t2pbat2/152225.pdf>.

GAO, *Drug Prices: Effects of Opening Federal Supply Schedule for Pharmaceuticals Are Uncertain* (GAO/HEHS-97-60, June 1997), available online at <http://www.gao.gov/archive/1997/he97060.pdf>.

GAO, *Medicaid: Changes in Drug Prices Paid by VA and DOD Since Enactment of Rebate Provisions* (GAO/HRD-91-139, Sept. 18, 1991), available online at <http://archive.gao.gov/t2pbat7/144939.pdf>.

<sup>3</sup> CBO, *How the Medicaid Rebate on Prescription Drugs Affects Pricing in the Pharmaceutical Industry*, (January 1996) available online at <http://www.cbo.gov/ftpdocs/47xx/doc4750/1996Doc20.pdf>.

- **Looking at “bottom line” prices secured by Medicaid ignores unintended negative consequences**

AMCP acknowledges that the statutory requirements of the Medicaid rebate program have resulted in lower “bottom line” prescription drug prices when compared to certain other programs such as Medicare Part D, but believes this comparison ignores multiple unintended consequences that have affected both private and public payers negatively. For example, it does not take into account any discounts or rebates that other payers may have been able to negotiate if not for the requirement that a manufacturer sell its product to Medicaid at the same rate. Furthermore, the Medicaid rebate is not negotiable; it is mandated by statute. The prices secured are not a reflection of the ability of the Medicaid program to negotiate low prices, but merely a rebate based on a mathematical calculation.

- **The “penalty” rebate for annual price increases in excess of general inflation has failed**

Even though it assesses an additional penalty rebate on manufacturers who increase year-to-year prices at rates above the Consumer Price Index (CPI), the rebate program has been unsuccessful at preventing large annual price increases. Manufacturers are instead choosing to increase prices and simply pay the penalty rebate. For the top 100 brand-name drugs by expenditure prescribed to Medicaid and Medicare Part D beneficiaries in 2009, 98 incurred a penalty rebate.<sup>4</sup> While Medicaid is able to recoup money from the increases, other purchasers are not, and the increased prices are passed along to other consumers.

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*The Academy of Managed Care Pharmacy (AMCP) is a national professional association of pharmacists and other health care practitioners who serve society by the application of sound medication management principles and strategies to assist patients in achieving positive therapeutic outcomes. The Academy's 6,000 members develop and provide a diversified range of clinical, educational and business management services and strategies on behalf of the more than 200 million Americans covered by a managed care pharmacy benefit. More news and information about AMCP can be obtained on its website, at [www.amcp.org](http://www.amcp.org).*