



January 9, 2003

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No. 176

UPDATE ON CO-PAYMENTS FOR ADULTS IN MEDICAID

DEVELOPMENTS

There have been two noteworthy developments since publication of Policy Page #172:

1) Late Modifications to Proposed Co-Pay Rule. In early November, HHSC officials determined that, while federal regulation clearly prohibits the denial of service to a Medicaid enrollee unable to pay, the regulations also specify that the unpaid co-payment can be treated as a legitimate debt by the health care provider, and collection pursued as such. (*See 42 CFR 447.15: "...the provider may not deny services to any eligible individual on account of the individual's inability to pay the cost sharing amount imposed by the plan in accordance with Sec. 431.55(g) or Sec. 447.53. The previous sentence does not apply to an individual who is able to pay. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge."*)

This reversed HHSC's earlier proposed policy. In light of this interpretation, HHSC decided that they would require recipients to prove that they have met their monthly cap by saving and showing receipts. Merchants and providers may not treat co-pays above the cap as debts.

The final adopted rule language was changed to reflect the liability of clients for unpaid co-payments, but no language was added related to clients' obligation to retain receipts to prove they have met their caps. In fact, the adopted rule does not even specify that HHSC has set the monthly cap; the language only allows HHSC to set caps.

A revised version of Policy Page #172 has been posted at www.cppp.org, reflecting these changes in policy. Changed text is under the sections titled, "Monthly Cap" and "Access to Benefits Guaranteed." The adopted rules, plus a synopsis of comments received, were published in the *Texas Register* December 6 issue at page 11521, which can be viewed at www.sos.state.tx.us.

2) State District Court Suspends Implementation of Medicaid Co-payment Rules. The Texas Pharmacy Association and Texas pharmacists filed a petition for a temporary restraining order (TRO) to stop implementation of rules that would require recipient co-payments and decrease reimbursements to pharmacists participating in the Medicaid program. The State District Court granted the order on Monday, December 16, 2002. TPA and other individual pharmacists are serving as plaintiffs in this lawsuit. On December 26, 2002, the court agreed to hear the case no sooner than February 3, 2003. The hearing will likely take place either on February 3, 2003 or sometime shortly thereafter. Co-payments and adjustments to pharmacy reimbursement will not proceed forward until the court rules.

Until the matter is resolved by the courts, Medicaid recipients should not make co-payments, and providers must not seek to collect Medicaid co-payments. If a provider has collected a Medicaid co-payment, the provider should refund that amount to the recipient. If a Medicaid recipient has made a co-payment, the recipient should contact the provider for a refund.

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