



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: MARY-GRACE MENDOZA MM
Assistant Attorney General

DATE: November 19, 2013

SUBJECT: Fast-Track Submission - Discontinue Coverage of Benzodiazepines-
Barbiturates for Dual Eligible Individuals (12 VAC 30-50-35 and 12 VAC 30-
50-75)

This memorandum responds to your request that this Office review the amendments to 12 VAC 30-50-35 and 12 VAC 30-50-75, "Discontinue Coverage of Benzodiazepines-Barbiturates for Dual Eligible Individuals," which eliminate coverage for both benzodiazepines and barbiturates for full benefit dual eligibles (eligible for both Medicare and Medicaid), who may now obtain both these drugs under Medicare Part D drug coverage.

Based on my review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

Va. Code §§ 32.1-324 and 32.1-325 grant to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. The authority for these amendments derives from Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) and the Affordable Care Act of 2010. MIPPA amended section 1860D-2(e)(2)(A) of the Social Security Act to remove the blanket exclusion of these two drugs from Part D coverage. The Affordable Care Act amended section 1927(d)(2) of the Social Security Act, to require Medicare Part D coverage of benzodiazepines and barbiturates for any health condition, effective January 1, 2014. Because of this additional Part D drug coverage, DMAS no longer needs to provide this class of drugs to full benefit dual eligible individuals. Accordingly, it is my view that this action was properly promulgated under the fast-track rulemaking process pursuant to Va. Code § 2.2-4012.1 because the regulatory action is expected to be noncontroversial.

Please call me at (804) 786-6004 if you have any questions regarding this memorandum.
Thank you.

cc: Kim F. Piner
Chief/Senior Assistant Attorney General



Logged in: mgm

Proposed Text

Action: Discontinue Coverage of Benzodiazepines-Barbiturates for Dual ...

Stage: Fast-Track

6/28/13 3:03 PM [latest]

12VAC30-50-35

THE TEXT OF THIS REGULATION IS IN DRAFT FORM AND SHOULD NOT BE RELIED UPON FOR LEGAL INTERPRETATION.

12VAC30-50-35. Requirements relating to payment for covered outpatient drugs for the categorically needy.

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit-Part D. The following excluded drugs are covered:

- a. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);
- b. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);
- c. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);
- d. Nonprescription drugs (see specific drug categories in subsection B of this section);
- e. ~~Barbiturates (see specific drug categories in subsection B of this section); and~~
- f. ~~Benzodiazepines (see specific drug categories in subsection B of this section).~~

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.

12VAC30-50-75

THE TEXT OF THIS REGULATION IS IN DRAFT FORM AND SHOULD NOT BE RELIED UPON FOR LEGAL INTERPRETATION.

12VAC30-50-75. Requirements relating to payment for covered outpatient drugs for the medically needy.

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit Part D. The following excluded drugs are covered:

- a. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);
 - b. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);
 - c. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);
 - d. Nonprescription drugs (see specific drug categories in subsection B of this section);
 - e. ~~Barbiturates (see specific drug categories in subsection B of this section); and~~
 - f. ~~Benzodiazepines (see specific drug categories in subsection B of this section).~~
- B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.