

## DISABILITY BENEFIT SPECIALIST PROGRAM

Program Updates – February 2010

### I. SOCIAL SECURITY ADMINISTRATION (SSA)

#### A. New On-line 3368 Unveiled

SSA has revised the on-line disability report – form 3368. **A webinar had been planned for February 11, but has been cancelled and will be rescheduled.** We will let you know when we learn the date.

The new form is for all new applications started on or after January 23. Continue to use the Pre-January 23 Adult Disability Report-PRO version for any disability report you have already started but not yet completed. Anyone attempting to access the Adult Disability Report-PRO to begin a *new* application after January 23 will be automatically redirected to the enhanced version at [www.socialsecurity.gov/disabilityreport](http://www.socialsecurity.gov/disabilityreport).

**Sharon Taylor**, DBS in **Clark County**, reports that her local SSA office has asked for her comments and suggestions about the new form. Even if your local SSA office has not solicited your comments, you may want to pass on your favorable comments, plus your suggestions for improvements as well.

The biggest changes are in the Medical and Job History sections. Rather than listing impairments in a free-format text field, the new report allows for a numbered list of medical conditions. In the Job History section, if a claimant has done more than one type of work in the 15 years prior to onset, they do not have to provide all the detailed information about their work (e.g., describing work responsibilities, time spent sitting, standing, etc.); all that will be asked are the basics: job title, type of business, hours and wage

The medical portion includes fields for medication and tests within the medical provider page, so it's possible to provide all information about a source without leaving the page. The tests and medication pages still exist as stand-alones.

There appear to be no plans to revise the Starter Kit (3381).

#### B. Adult SSI Application Can Be Filed by 17 Year Olds in Foster Care

SSI applications for adults cannot be filed until the month the applicant reaches the age of 18. However, minor children who are transitioning out of foster care can now apply for adult SSI benefits as early as age 17 and 9 months due to a recent change in SSA policy. Neither the

income of the parents nor foster care payments will not be deemed to the child. This change will aid youth with disabilities in foster care make the transition to adult life by helping to insure that they have income and health benefits in place before their release from foster care.

The new policy is effective January 13, 2010 and is described in POMS section SI 00601.011 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500601011!opendocument>

The claimant may file an SSI application if she or he:

- lives in a foster care situation as defined in SI 00830.410A.A;
- alleges blindness or disability;
- appears likely to meet all of the non-medical eligibility requirements when foster care payments terminate; and
- expects the foster care payments to cease within 90 days of the application filing date.

### **C. Homebuyers Tax Credit is Counted as Unearned Income for SSI Purposes**

The first-time homebuyers and "deemed" first-time homebuyers tax credit are considered unearned income for SSI purposes. An individual or couple must file a tax return to obtain either the first-time homebuyers tax credit or "deemed" first-time homebuyers tax credit. Unlike most tax credits, these tax credits are fully refundable. This means that the tax credit will be paid to eligible taxpayers even if they owe no tax or the tax credit is more than the amount of tax owed.

Normal resource counting rules apply to cash that is attributable to the first-time homebuyers or "deemed" first-time homebuyers tax credit. Therefore, if the individual retains the cash it becomes a countable resource as of the first moment of the month following the month of receipt.

### **D. More on the Fleeing Felon Settlement – National Senior Citizens Law Center memo**

We have attached a very helpful memo from the National Senior Citizens Law Center that explains the three categories of persons that will be affected by the fleeing felon settlement. Please review this memo so you are familiar with how the categories of persons will be affected by the fleeing felon settlement.

In addition, this form can be handed out to DBS clients to help them understand how the fleeing felon settlement may affect them.

Because Congress could potentially overturn the settlement, the National Senior Citizens Law Center is interested in collecting stories about persons affected by the fleeing felon settlement. Therefore, please contact your Program Attorney if you come across persons affected by the fleeing felon settlement.

## **II. MEDICARE**

### **A. SSA Invitation to Individuals Previously Denied Extra Help with Part D to Reapply**

Letters to those who were previously denied extra help with Part D through Social Security are receiving a letter inviting them to reapply under the expanded guidelines implemented January 1, 2010. The letter is going out and the sample letter is attached. It will be mailed to over 42,000 individuals in Wisconsin.

### **B. Problems with SSA Software Delaying Processing of Some Extra Help Applications**

A small subset of individuals who applied for extra help with Medicare Part D costs through SSA are running into a computer glitch that slows down the application processing. This delay is occurring for individuals who had the LIS for 2009 because of Medical Assistance (either because they had Medical Assistance in the last part of 2008 or in the first part of 2009) but are losing it in 2010. Individuals in this situation were asked to apply for SSA's Extra Help program. Some of these individuals are no longer eligible for Medical Assistance or a Medicare Savings Program, making the SSA Extra Help program their only option to get the LIS. Some of these individuals are running into a problem in the SSA computer system that is delaying their application. It may be difficult to determine if the applicant you are working with falls into this category. SSA is asking that any individual who has been waiting for an Extra Help determination for more than 30 days call the appropriate SSA field office to find out if they are affected by this glitch and to see if SSA can remedy the situation.

### **C. Co-pay Amounts for Those with the Low Income Subsidy**

We have always trained that the co-payments for drugs for the low income subsidy differed whether you had income under 100% of the federal poverty level or over 100% of the FPL. However, we recently reviewed the law and discovered that, while in practice, this has occurred in Wisconsin, the law dictates a different standard. Recently, we have received dozens of calls on the helpline indicating that large percentages of people are receiving notices that their copayments are going to be changing - and going up! A large percentage of these individuals were receiving the "below 100% FPL" copayments even when their incomes have never been below 100% FPL. Further, large numbers of non-full benefit dual eligibles with incomes below 100% of FPL are now getting notice that they will now be getting the higher copayment amounts. The appropriate copayments are as follows:

- The low copayment bracket (currently \$1.10 for generics and \$3.30 for brand names) is available **ONLY** to those with **BOTH** full benefit Medicaid **AND** income below 100% of the federal poverty limit.
- All other low income subsidy individuals, even those with incomes below 100% of the FPL should receive the higher copayment levels (\$2.50 for generics and \$6.30 for brand names).

We have no explanation for why beneficiaries were getting lower copayments before this year. We do know that beneficiary copayments are now in line with federal law. Because these individuals did receive notices that copayments would go up and because the copayments are now in line with federal law, there is nothing we can do to lower copayments for these individuals.

#### **D. Transition Rights for Beneficiaries:**

Georgia Burke of the National Senior Citizens Law Center wrote a great summary of transition rights for people with Medicare Part D. The summary is attached.

#### **E. Beneficiaries Affected by Plan Terminations.**

As discussed in previous updates, many people were affected by plan terminations in Wisconsin, both terminations of Medicare Advantage Plans and terminations of Prescription Drug Plans. We had previously told you that these individuals had until the end of January to enroll in a new plan. However, due to the fact that an unusually large number of beneficiaries failed to enroll in a new plan, a subset of these beneficiaries will now have until February 28, 2010 to enroll in a new plan. CMS will be sending another letter to any individual who has not chosen a new Medicare Advantage or Prescription Drug plan. This letter will describe what options are available to the individual, including whether the individual has a Special enrollment period until February 28, 2010.

The model letter can be found at:

<http://www.cms.hhs.gov/partnerships/downloads/11452.pdf>

#### **F. Medicare and You Booklets Contain Two Errors:**

In the hardcopies of Medicare and You booklets mailed to consumers, two errors may have lead beneficiaries to make impermissible choices regarding Medicare Part D. If you have a client who erroneously relied on one of these two misleading/ erroneous statements, please contact Eva at [evas@drwi.org](mailto:evas@drwi.org) for help to make the beneficiary whole and fix any harm that resulted from reliance on this information.

##### ***Error number one: Page 43.***

In the right hand column, under step two, underneath a column describing Medicare Advantage plans, including HMOs and PPOs, it states under the title “Decide if you Want Prescription Drug Coverage (Part D)” in the second bullet that: “If your plan doesn’t offer drug coverage, you can choose and join a Medicare Prescription Drug plan.” This gives the impression that you can have a Medicare Advantage HMO or PPO AND a Medicare Part D plan, and this is not always the case. If you signed up for a Part D plan and then a Medicare Advantage plan relying on this information, the enrollment into a Medicare Advantage Plan may have terminated your enrollment into a Part D plan. If you did this relying on page 43, and you would like to change your coverage to include a Part D plan, please contact Eva at [eva.shiffirin@drwi.org](mailto:eva.shiffirin@drwi.org).

***Error number two: Page 63.***

Under the title “When Can You Join, Switch, or Drop a Medicare Drug Plan?” it states: “You can join, switch, or drop a Medicare drug plan at these times.” In the fourth bullet, it states that you can change “Between January 1- March 31 of each year if you already have Medicare prescription drug coverage.” If a beneficiary relied on this believing they could switch and are now being told that they have to wait to switch Part D coverage until the next Part D annual enrollment period, please contact Eva at [eva.shiffrin@drwi.org](mailto:eva.shiffrin@drwi.org) for help.

**G. New Kaiser Family Foundation Study on Medicare Advantage Plan Cost Sharing for 2010.**

A new Kaiser Family Foundation study analyzes Medicare Advantage Plan Cost sharing. The full article can be found at <http://www.kff.org/medicare/8047.cfm>. Highlights include:

- Cost-sharing requirements vary widely across Medicare Advantage plans in 2010. For example, enrollees could pay anywhere between \$0 and \$3,325 for a five-day inpatient hospital stay, depending upon where they live and the plan they select.
- Average cost-sharing for some Medicare-covered services has increased rapidly between 2008 and 2010 among Medicare Advantage plans – up 18 percent for an average stay in a skilled nursing facility and up 36 percent for an average inpatient hospital stay.
- In 2010, about four in five Medicare Advantage plans set an annual limit on enrollees’ out-of-pocket spending, providing protection from catastrophic costs that traditional Medicare does not provide. However, 31 percent of all plans have limits above the \$3,400 level recommended by the Medicare program and 21 percent have no limit.
- Nearly half of 2010 plans provide some coverage in the "doughnut hole" for Medicare’s drug benefit – 28 percent cover generic drugs only, and 21 percent cover generics and some brand-name drugs.

### **III. BADGERCARE PLUS / CORE**

#### **A. Renewal for Transitional CORE Plan members to begin in March 2010**

Several thousand people who were on General Assistance in Milwaukee County and various other Wisconsin counties were transitioned onto the Core Plan in December 2008. Those persons will need to do reviews beginning in March. Reviews will be done in March, April and May, depending on the Transitional Core Plan members' date of birth. There are several unique features to the review for this group. Members who lived in Milwaukee County, but may have moved to other counties, and the small group of people who were on county general assistance in other counties, will need to complete a review. Please contact Ellen Escalera if you have a client, or know of a person, who was transitioned onto the Core Plan in December 2008. Ellen E. will provide you with more detailed information on what needs to be done to maintain Core Plan eligibility.

#### **B. CORE - Everyone Needs a Physical Exam**

It feels like we just got through enrolling people into the Core Plan, but renewal time is just around the corner. Most Core Plan members should now be enrolled in managed care, or have requested an exception to enrollment. (Core Plan members in southeast Wisconsin will remain fee-for-service until later this year.) Continued Core Plan eligibility requires that all Core Plan members obtain a physical examination from a primary care provider before they can renew later this year. People who have not found a primary care provider should contact their HMO immediately. The HMO is responsible for ensuring that all members obtain the physical exam.

#### **C. It is Not Too Early to Think About the Fee!**

The \$60 is an annual fee. It is not too early to start encouraging people to save the \$60, or to identify area resources that may be able to pay part, or all, of the fee on a Core Plan member's behalf. It is crucial for people to meet all of the eligibility criteria and complete their Core Plan renewals to avoid losing coverage and being placed on the waitlist. Persons who are homeless will continue to have the fee waived. More information will be made available as the date for renewal approaches. Additional training will be available on how to renew online at ACCESS.GOV.

#### **D. New Renewal Notices**

Operations Memo 10-04 provides copies of nine different renewal notices that will go out to Medicaid, BadgerCare Plus, Core Plan, Family Planning Waiver, FoodShare, and Caretaker Supplement recipients. The 45-day notices inform participants of the review deadline and instructs them to complete their renewal online at ACCESS under the new Renew My Benefits feature, or to contact either the Enrollment Services Center or their local agency. Claire Smith will provide more information on the Renew My Benefits feature on ACCESS and how to best assist your clients to renew their benefits and maintain coverage.

Read the Operations Memo at <http://dhs.wisconsin.gov/em/ops-memos/2010>.

### **E. Core Plan Preferred Drug List**

The preferred drug list for Core Plan members was updated on February 1, 2010. The new quick reference sheet of the brand name drugs available to Core Plan participants is attached to these program updates.

### **F. BadgerCare Plus BASIC**

Governor Doyle announced in January the development of a basic health care plan for childless adults on the Core Plan waitlist. The news release and an informational sheet are attached to the program updates. Claire Smith from the DHS will provide more information at the February 9<sup>th</sup> webcast.

## **IV. MEDICARE SAVINGS PROGRAMS**

### **A. Coordination between Medicare Part D Low Income Subsidy Application and Medicare Savings Plan Application**

As we have mentioned in prior Program Updates, as of January 1, 2010, if a person applies for the Low Income Subsidy with the Social Security Administration and does not check the opt out box, the LIS application will be considered a Medicare Savings Plan application. However, because MSP applications are processed by the State of Wisconsin, SSA cannot process the MSP application. Ops Memo 10-07 explains how such MSP applications will be processed by Wisconsin.

Under Ops Memo 10-07, SSA will notify the State of Wisconsin of the MSP application once the LIS determination has been made. The State will then send a letter to the applicant requesting the applicant to complete and return a full MSP application to his or her local economic support agency within 30 days. If the application is not returned within 30 days, the applicant will receive a denial notice.

The full memo can be found here: <http://dhs.wisconsin.gov/em/ops-memos/2010/pdf/10-07.pdf>

## **V. COBRA**

### **A. COBRA Subsidy Eligibility Ending February 28, 2010**

Under current Federal law, anyone involuntarily terminated from his or her job after February 28, 2010, will not be eligible for the 65% COBRA subsidy. However, there is a possibility that Congress may extend this date. We will notify you if that happens.

## **VI. HEALTH INSURANCE - GENERAL**

### **A. Mental Health Parity rules issued**

Federal rules implanting the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 were issued recently. Under the rules, any group health plan that includes mental health and substance use disorder benefits along with standard medical and surgical coverage must treat them equally in terms of out-of-pocket costs, benefit limits, and practices such as prior authorization and utilization review.

MHPAEA applies to employers with 50 or more workers whose group health plans choose to offer mental health or substance use disorder benefits. The new rules are effective for plan years beginning on or after July 1, 2010.

## **VII. FOODSHARE**

### **A. FoodShare Backlog Eliminated**

The state has cleared a backlog of thousands of FoodShare applicants that occurred because of the increase in applications due to BadgerCare Plus Core. At one point in 2009, only 82% of applications were being processed within the required 30 days. Federal law requires that 95% of applications be processed within 30 days.

Wisconsin had nearly 700,000 families enrolled in FoodShare at the end of 2009, a 40% increase over 2008.

## **VIII. VETERANS**

### **A. Pharmaceutical Increases Delayed Until June 30, 2010**

The Veterans' Administration is delaying a \$1.00 increase in the co-pay for each 30 day supply of medication for a non-service related condition. On June 30, 2010 the new \$9.00 co-pay will go into effect. Between now and June 30, 2010 there is a \$960 maximum on out-of-pocket payments for non-service related prescriptions.

## **IX. OTHER**

### **A. Tax Credits – Information for Your Clients**

Wisconsin's low income families benefit from the federal and state Earned Income Tax Credit, Homestead Tax Credit and the federal Child Tax Credit. In addition to the Volunteer Income Tax Assistance program mentioned in the January 2010 program updates, your clients may find flyers from The Wisconsin Coalition on Children and Families helpful. The flyers are located at the following web addresses:

English version: [http://www.wccf.org/pdf/taxcredit\\_chart\\_english.pdf](http://www.wccf.org/pdf/taxcredit_chart_english.pdf)

Spanish version: [http://www.wccf.org/pdf/taxcredit\\_chart\\_spanish.pdf](http://www.wccf.org/pdf/taxcredit_chart_spanish.pdf)

Hmong version: [http://www.wccf.org/pdf/taxcredit\\_chart\\_hmong.pdf](http://www.wccf.org/pdf/taxcredit_chart_hmong.pdf)

### **B. Terminations for Some Wisconsin Unemployment Compensation Recipients**

In November, 2009, President Obama signed The Workers Assistance Act of 2009 into law. The Act added two additional federal extensions of unemployment benefits which are payable if the state's unemployment rate remains at certain levels. These programs are called Tier 3 and Tier 4. Tier 3 pays up to 13 weeks of additional benefits. Tier 4 pays up to 6 weeks of additional benefits. As of January 9, 2010, Wisconsin's unemployment rate is no longer at the required level for Tier 4, the final extension. As a result, no benefits can be paid under this final tier of benefits as of January 9, 2010.