

# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

Office of Public and Indian Housing

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Special Attention of:	<b>NOTICE: H-2005-21</b>
Regional Directors	<b>NOTICE: PIH-2005-37 (HA)</b>
Multifamily Hub Directors	Issued: December 9, 2005
Multifamily Program Center Directors	Expires: December 31, 2006
Multifamily Project Managers	
Contract Administrators	
Owners and Management Agents	Cross References
	Notice H 04-11 and PIH 2004-11
	Notice H 04-24 and PIH 2004-24
Public Housing Agency Directors	
Section 8 and Public Housing Administrators	
HUB Directors of Public Housing	
PIH Program Center Coordinators	
Public Housing Division Directors	

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Subject: Income calculation and verification guidance regarding the Medicare Prescription Drug Plan – Part D Program

## A. PURPOSE

This Notice provides guidance on the Medicare Prescription Drug Plan – Part D program (permanent program) that becomes effective on January 1, 2006. Public Housing Agencies (PHAs), Owners and Management Agents must use the guidance in Section D of this Notice when determining annual and adjusted income for Medicare beneficiaries enrolled in a Medicare prescription drug plan.

The Medicare Approved Prescription Drug Discount Card and Transitional Assistance in Section E is the same guidance previously issued in Notices H 04-24 and PIH 2004-24. The Medicare approved prescription drug-discount card and transitional assistance program is a temporary program and benefits will stop for recipients on May 15, 2006 or when they enroll in a Medicare prescription drug plan, whichever date is first. After May 15, 2006, the guidance in Section E will no longer apply and must not be used by PHAs, Owners and Management Agents for rent calculation and verification purposes.

## **B. APPLICABILITY**

This Notice applies to PHAs that administer the public housing and the Housing Choice Voucher (HCV) programs.

This Notice also applies to PHAs, Owners and Management Agents operating HUD assisted units under:

- Section 221(d)(3) BMIR
- Section 236
- Rental Assistance Program (RAP)
- Section 101 Rent Supplement
- Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Loan Management Set-Aside and Property Disposition Set-Aside
- Section 202/8
- Section 202 PAC
- Section 202 PRAC
- Section 811 PRAC

## **C. BACKGROUND**

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act (MMA) that will offer all Medicare beneficiaries access to the Medicare prescription drug plan subsidized prescription drug coverage beginning January 1, 2006. Medicare beneficiaries must choose and enroll in a plan that meets their prescription drug needs. The initial enrollment period is November 15, 2005 through May 15, 2006. Persons who sign up after May 15, 2006 will pay a monthly penalty of 1 percent of the monthly premium, and the penalty will continue for the life of their coverage.

The MMA provides additional help to those who need it the most – those with high prescription drug costs and those with low incomes. Under the MMA, Medicare beneficiaries who have low incomes and limited assets may apply for an additional subsidy to assist them in paying for their Medicare prescription drug plan costs. Persons who have Medicaid, a Medicare Savings Program, or SSI will automatically receive the extra help and do not need to apply for it. See Section D of this Notice for more information on the Medicare Prescription Drug Plan program.

Until this new program is effective, the MMA has provided a prescription drug discount card and a \$600 subsidy (transitional assistance) to eligible Medicare beneficiaries. The prescription drug discount card and transitional assistance is a temporary program that started in June 2004 and will continue for beneficiaries enrolled in the program until May 15, 2006 unless the beneficiaries enroll in a Medicare prescription drug plan prior to that date. See Section E for a full description of the temporary program.

Attachment 1 is a Comparison Chart of the Permanent and Temporary Prescription Drug Plans showing the differences between the two programs for income and rent determination purposes.

## **D. MEDICARE PRESCRIPTION DRUG PLAN – PART D (Permanent Program)**

### **1. Statutory Requirement**

Once the permanent program takes effect on January 1, 2006, the statutory requirement applicable to the temporary prescription drug discount card and transitional assistance will no longer apply. There is no statutory protection under the Medicare prescription drug plan – Part D program preventing public and assisted housing income determinations, assistance or rents from being affected by this Medicare benefit.

### **2. Whom Does This Statutory Requirement Cover?**

The new Medicare Prescription Drug Plan benefit makes prescription drug coverage available to all Medicare beneficiaries, providing them with substantial federal help in paying for their prescription drugs. All beneficiaries, regardless of income, will receive protection from high prescription drug costs under the new permanent Medicare Prescription Drug Plan program.

Medicare beneficiaries with low incomes and limited assets are eligible for additional assistance in paying their Medicare prescription drug plan costs. This assistance is known as “low-income subsidy” and may also be referred to as “limited income” or “extra help.” Beneficiaries qualifying for the low-income subsidy will have the majority of their prescription drug plan costs and prescription drug spending covered.

### **3. Rent Calculations Covered By This Statutory Requirement**

#### **a. Annual Income**

In calculating annual income for a family, the low-income subsidy received to assist low-income persons in paying for their Medicare prescription drug plan costs must be excluded as annual income for the purpose of calculating any rent or assistance.

#### **b. Adjusted Income**

The amount of unreimbursed out-of-pocket expenses for prescription drugs must be treated as a standard medical deduction when determining the family’s medical expenses deduction. PHAs, Owners and Management Agents must follow the guidance on medical expenses found in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily*

*Housing Programs, the Public Housing Occupancy Guidebook, the Housing Choice Voucher Program Guidebook* and the regulations at 24 CFR 5.609(c)(4) and 5.611(a)(3).

Persons with a Medicare prescription drug plan may be required to pay a premium up to \$37 and this premium will be counted as a medical deduction. However, many of those receiving the low-income subsidy will not be required to pay a premium.

Not all prescription drugs are covered under the Medicare prescription drug plans; therefore, a person may be paying full price for some prescription drugs and a reduced amount for other prescription drugs.

The standard medical deduction as described at 24 CFR 5.609(c)(4) and 5.611(a)(3) continues to be the sum of allowable medical expenses that exceed 3 percent of annual income.

#### **4. Implementation**

- a.** Tenants do not have to report they have enrolled in a Medicare prescription drug plan until the time of their next recertification.
- b.** The Medicare prescription drug plan is effective January 1, 2006. With implementation of this program, PHAs, Owners and Management Agents must:
  - Exclude from annual income the low-income subsidy received by beneficiaries enrolled in this program.
  - Include as a medical expense for the medical expenses deduction, the out-of-pocket expenses incurred for prescription drugs and premiums.

#### **5. Verification**

##### **a. Verification of eligibility**

PHAs, Owners and Management Agents must verify that the applicant or tenant has enrolled in a Medicare prescription drug plan. Persons enrolled in a Medicare prescription drug plan will be issued a card directly from the provider of the private prescription drug plan they select. This card will include the Medicare prescription drug benefit program seal on the front of the card. This seal is a logotype comprised of the words Medicare Rx with the words Prescription Drug Coverage directly beneath. The Medicare Prescription Drug Coverage seal can be viewed at [www.medicare.gov](http://www.medicare.gov) on page 11 of the Medicare & You 2006 handbook.

**b. Verification of amount of benefit**

PHAs, Owners and Management Agents must verify the amount of unreimbursed out-of-pocket expenses the applicant or tenant will have for prescription drugs, as well as the amount of the premium for their prescription drug plan. Third party verifications must be obtained when possible or the file must be documented why such third party verification was not available.

Medicare beneficiaries required to pay a premium have the option to pay the premium directly to the plan provider or have the premium deducted from their social security. Regardless of whom they pay the premium to, the premium is an allowable medical expense.

Medicare beneficiaries will receive statements about their prescription drug spending for months in which they have prescription drug spending. If there is no activity in a given month, the plan is not obligated to send an explanation of benefits. Tenants may provide the statements they receive to help verify how much they spend on prescription drugs.

Attachment 2, Medicare Part D Coverage and Assistance Chart, may assist in determining when deductibles, co-pays and premiums apply.

A Tip Sheet answering questions related to the Medicare prescription drug plan coverage and how the permanent program affects HUD applicants and residents is included as Attachment 4.

More information regarding the Medicare Prescription Drug Plan program can be found at the Department of Health and Human Services website at:

<http://www.cms.hhs.gov/medicarereform/pdbma/>

**E. PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE (Temporary Program)**

**1. Statutory Requirement**

The MMA amended the Social Security Act. Section 1860D-31(g)(6) of the Social Security Act states that “the availability of negotiated prices or transitional assistance under this section shall not be treated as benefits or otherwise taken into account in determining an individual’s eligibility for, or amount of benefits under, any other Federal program.”

The requisite result of this statutory requirement is that recipients of this Medicare prescription drug discount card and transitional assistance benefit should experience no decrease in the amount of assistance received from other Federal programs as a

result of this Medicare benefit, including HUD's public housing and assisted housing programs. Specifically, public and assisted housing income determinations, assistance or rents must not be affected in any way by this Medicare benefit.

## **2. Whom does This Statutory Requirement Cover?**

This statutory requirement will only apply to those HUD program participants and applicants who are (1) receiving Medicare, and (2) are enrolled in the Medicare Prescription Drug Discount Card and Transitional Assistance programs. Medicare beneficiaries enrolled in this program are eligible to remain in the program until May 15, 2006 UNLESS they have enrolled in a Medicare prescription drug plan prior to this date.

The income exclusion and deductions mandated by the MMA will continue to be applied to those HUD program participants and applicants who remain enrolled in the temporary program and who are in compliance with the applicable Medicare program rules and regulations until May 15, 2006.

## **3. Rent Calculations Covered By This Statutory Requirement**

### **a. Annual Income**

In calculating annual income for a family, any assistance or benefit received from the Medicare prescription discount card or the transitional assistance must be excluded as annual income for the purpose of calculating any rent or assistance.

### **b. Adjusted Income**

The Medicare prescription drug discount cards and transitional assistance received by a family must be treated as a standard medical deduction when determining the family's medical expense deduction. In this way, families using the prescription drug discount card or receiving transitional assistance will continue to receive a medical deduction for the full cost of the prescription drugs prior to receiving these benefits. PHAs, Owners and Management Agents must verify the cost of the prescription drugs without the Medicare negotiated price benefit for eligible prescription drugs rather than verifying the out-of-pocket cost of the prescription drugs to the tenant.

The standard medical deduction as described at 25 CFR 5.609(c)(4) and 5.611(a)(3) continues to be the sum of allowable medical expenses that exceed 3 percent of annual income. Where all or part of the cost for prescription drugs is covered by the Medicare prescription drug discount or transitional assistance, neither the prescription drug discount nor the

transitional assistance should be considered a reimbursement for the purpose of calculating the medical expense deduction.

The prescription drug discount card program may have an enrollment fee up to \$30. Any person who receives transitional assistance will have the enrollment fee paid by Medicare. However, any person for whom Medicare does not pay the enrollment fee may claim such fees as a medical deduction.

#### **4. Implementation**

The temporary program began June 1, 2004 and **will continue until May 15, 2006 for those beneficiaries under this program UNLESS they have enrolled in a Medicare prescription drug plan prior to this date.** Until such time as this program no longer exists for Medicare beneficiaries still under this program, PHAs, Owners and Management Agents must:

- Exclude from annual income the \$600 transitional assistance subsidy for applicants and tenants enrolled in the Medicare transitional assistance program.
- Exclude from annual income any negotiated prescription drug discount pursuant to the Medicare prescription drug discount card.
- In cases where medical expenses are normally deducted from a HUD participant's income, include as a medical deduction, the Medicare assistance provided for the cost of prescription drugs pursuant to prescription drug discount cards, negotiated prescription drug price, or transitional assistance subsidies.

Attachment 3 is an example of how PHAs, Owners and Management Agents are to implement this income exclusion and deduction under the prescription discount card and transitional assistance program.

#### **5. Verification**

##### **a. Verification of eligibility**

PHAs, Owners and Management Agents must verify that the tenant has a Medicare approved prescription drug discount card. This will determine whether or not the amount of the prescription drug discount and the \$600 transitional assistance credit are disregarded as income and in the calculation of the medical deduction. All discount cards approved by Medicare will have a seal with the words "Medicare Approved". The Medicare Approved seal can be viewed at [www.medicare.gov](http://www.medicare.gov) at publication 11060. Only discounts received under a Medicare-approved discount card are included as a medical expense. Discounts received through other prescription drug discount cards are not eligible to be disregarded.

**b. Verification of amount of prescription drug**

PHA, Owners and Management Agents must verify the amount the individual would have had to pay for each prescription drug in absence of the negotiated discount provided by the Medicare-approved prescription drug discount card or any payments made by the \$600 transitional assistance credit. Verification must also include a determination that the prescription drug is eligible for the discount since not all prescription drugs are eligible. PHAs, Owners and Management Agents must use third party verification when possible or document in the file why such third party verification was not available. To insure that the best estimate is obtained, any of the methods below will satisfy HUD's regulatory requirements:

- Information on the receipt the individual receives when paying for a prescription drug if the pre-discount cost of the prescription drug is included.
- If information for the pre-discount price of the prescription drug cannot be determined with current information, use receipts showing the amount paid for the prescription drug prior to the individual enrolling for the Medicare-approved prescription drug discount card.
- If the beneficiary cannot obtain a receipt with the pre-discount cost of the prescription drug, the PHA, Owner, or Management Agent may call the pharmacy to obtain the pre-discount cost. The information provided on the Medicare website at [www.medicare.gov](http://www.medicare.gov) may also be used to determine the pre-discount cost of the prescription drug.
- When the pre-discount price of a prescription drug cannot be determined, use an imputed value of \$48.17 per prescription drug as a substitute for the actual pre-discount price. The imputed value of \$48.17 represents the national average cost per prescription drug for the cash-paying customer in 2003 based on Centers for Medicare and Medicaid Services' Office of the Actuary analysis of data from IMS Health, National Prescription Audit for 2003. However, in all instances, if a beneficiary can provide satisfactory evidence that he or she paid more than the imputed amount for the prescription drug, the higher amount is used. An example of the use of the imputed amount is as follows: an individual presents documentation that he/she purchases an eligible prescription drug monthly but the pre-discount cost of the prescription drug cannot be obtained. The individual would receive credit for a medical expense of  $\$48.17 \times 12$  or \$578.04 annually. The imputed amount of \$48.17 is used for each eligible prescription drug that cannot be verified through one of the other methods.



Further questions on the temporary and permanent programs should be directed to the local HUD Field Office in your jurisdiction.

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Brian D. Montgomery, Assistant Secretary for  
Housing-Federal Housing Commissioner

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Paula O. Blunt, General Deputy Assistant  
Secretary for Public and Indian Housing

**Comparison Chart of the Permanent and Temporary Prescription Drug Plans  
for Income and Rent Determinations**

	<b>Medicare Prescription Drug Plan – Part D</b>	<b>Prescription Drug Discount Card and Transitional Assistance</b>
<b>Statutory Requirement</b>	No protection.	Protects income determinations, assistance and rents from being affected by this Medicare benefit.
<b>Annual Income</b>	Exclude from annual income, the low-income subsidy received to assist in paying for Medicare prescription drug plan costs.	Exclude from annual income the assistance or benefits received from the Medicare prescription drug card or transitional assistance.
<b>Adjusted Income</b>	<p>Include as a medical expense all unreimbursed out-of-pocket expenses incurred for prescription drugs and drug plan premiums.</p> <p>PHAs/Owners/Agents follow the guidance in Handbook 4350.3 REV-1, <i>Occupancy Requirements of Subsidized Multifamily Housing Programs</i>, the Public Housing Occupancy Guidebook, the <i>Housing Choice Voucher Guidebook</i> and HUD regulations at 24 CFR 5.609(c)(4) and 5.611(a)(3) on medical expenses.</p> <p>The standard medical deduction continues to be the sum of allowable medical expenses that exceed 3 percent of annual income.</p>	<p>Include as a medical expense the pre-discount price of prescription drugs.</p> <p>The standard medical deduction continues to be the sum of allowable medical expenses that exceed 3 percent of annual income.</p>
<b>Verification</b>	Obtain third party verifications for out-of-pocket expenses incurred for prescription drugs and drug plan premiums.	Obtain third party verifications for pre-discount price of prescription drugs.

### Medicare Part D Coverage and Assistance Chart

	<b>Part D Beneficiary income (Greater than or equal to 150% FPL)</b>	<b>Partial Subsidy Eligible Beneficiary (Less than 150% FPL and resources below the alternative level*)</b>	<b>Full Subsidy Eligible Beneficiary (135% FPL or less and resources less than the resource level**),</b>	<b>Full Subsidy Eligible Beneficiary (with Full Medicaid Benefits)</b>
<b>Deductible</b>	\$250/year	\$50	\$0	\$0
<b>Initial Prescription Drug Benefit</b>	\$251 - \$2,250 with 25% co-pay	\$51 - \$5,100 with 15% co-pay	\$0 - \$5,100 with \$2 generic/\$5 non-preferred each prescription	\$0 - \$5,100 with \$1 generic/\$3 non-preferred each prescription*** if at or below 100% FPL; \$2 generic /\$5 non-preferred each prescription if above 100% FPL; and \$0 co-pays if institutionalized
<b>Between Initial Benefit and Catastrophic Benefit</b>	No coverage between \$2,250 and \$3,600 out-of-pocket (at least \$5,100 in prescription drugs)-100% beneficiary liability	Covered	Covered	Covered
<b>Catastrophic Benefit</b>	Over \$3,600 out-of-pocket (at least \$5,101 in prescription drugs) with 5% co-insurance or \$2 and \$5 co-pays	Over \$3,600 out-of-pocket with \$2 generic/\$5 non-preferred each prescription	Over \$3,600 out-of-pocket with no co-pay	Over \$3,600 out-of-pocket with no co-pay
<b>Premium†</b>	Estimated average \$37/month (premium varies by plan)	25%, 50%, or 75% of premium	\$0 (at least one \$0 premium plan must be available in an area)	\$0 (at least one \$0 premium plan must be available in an area)

FPL = Federal poverty level

\*Alternative resource test of \$10,000/single or \$20,000 couple applies.

\*\*Resource test in 2006 is 3 X SSI (\$6,000/single or \$9,000 couple).

\*\*\*Co-payments are indexed to the Consumer Price Index (CPI-U).

†For low-income beneficiaries, the subsidy is based on a percentage of the standard premium for the beneficiary's area.

**Example for  
Implementation of the Medicare Prescription Drug, Improvement and  
Modernization Act (MMA) of 2003  
Prescription Discount Card and Transitional Assistance**

An elderly household has annual income of \$10,000.00. The household is eligible to receive the prescription drug discount card plus the prescription drug transitional assistance. The Owner or Management Agent has verified that the household has anticipated medical expenses of \$1,300.00 of which \$600.00 of the expenses will be covered by the prescription drug transitional assistance. The tenant will also receive a negotiated savings on eligible prescription drugs through the use of the prescription drug discount card. What impact will the prescription drug discount card and the prescription drug transitional assistance have on the rent for this household?

		WITHOUT MMA BENEFIT		WITH MMA BENEFIT	IMPACT OF MMA BENEFIT
Social Security Income	\$10,000.00		\$10,000.00		
Transitional Assistance	0.00		600.00		
Transitional Assistance Exclusion	0.00		(600.00)		
<b>ANNUAL INCOME</b>		<b>\$10,000.00</b>		<b>\$10,000.00</b>	<b>-0-</b>
<i>Medical expense deduction is that portion of total medical expense that exceeds 3% of annual income. 3% of annual income = \$300.00</i>					
<b>Determine Allowable Medical Deduction</b>					
Transitional Assistance Payment	0.00		600.00		
Prescription Drug Discount Card Negotiated Savings	0.00		200.00		
Out of Pocket Cost to Tenant	1,300.00		500.00		
Total Projected Medical Deduction	1,300.00		1,300.00		
Less 3% of Annual Income	(300.00)		(300.00)		
Allowable Medical Deduction	1,000.00		1,000.00		
Elderly/Disabled Deduction	400.00		400.00		
<b>TOTAL DEDUCTION</b>		<b>(1,400.00)</b>		<b>(1,400.00)</b>	<b>-0-</b>
<b>Adjusted Income</b>		<b>\$8,600.00</b>		<b>\$8,600.00</b>	<b>-0-</b>
<b>Rent formula:</b> Monthly adjusted income ( $\$8,600.00 / 12$ )		<b>\$716.67</b>		<b>\$716.67</b>	
		<b>x .30</b>		<b>X .30</b>	
<b>MONTHLY RENT</b>		<b>\$215.00</b>		<b>\$215.00</b>	<b>-0-</b>

