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Caution: New medicare drug plan may cause headaches

CHAMPAIGN, Ill. -- If many seniors are scratching their heads about the new Medicare prescription drug plan, so are the experts.

"A prescription for confusion" is how Richard L. Kaplan, a professor of law at the University of Illinois, characterizes the new drug benefit, whose enrollment period begins today for Americans aged 65 years and older.

Kaplan describes the plan as "fashioned like no other pharmaceutical coverage in the world."

For starters, the program, known as Medicare Part D, will be administered by private insurance companies rather than the Social Security Administration, which handles hospitalization and doctor's bills under current Medicare coverage, known as Parts A and B.

This shift means that seniors must choose between drug plans with widely differing premiums, deductibles, co-payments and covered drugs. In Kansas, for example, Medicare beneficiaries have to shop for insurance among 40 plans from insurers such as Aetna, Humana and UnitedHealth Group, which charge premiums from $9.48 a month to $67.88 a month.

The plan's configuration reflects President George W. Bush's philosophy that competition from private insurers is more efficient than a government program. It also reflects the belief that "what older Americans want is a choice of plans rather than a single plan offering a choice of providers," Kaplan said in an interview. "But the array of options is so complex that many elders will be overwhelmed, as will attorneys and others who counsel older clients."

"Some seniors will need to take a laptop computer into their medicine cabinet to accurately compare alternatives," he added. Kaplan is a vice chair of the Elder Law

Committee of the American Bar Association's Senior Lawyers Division and has written frequently about Medicare in scholarly publications.

Another unusual aspect of the new plan is that, while coverage is voluntary, seniors who delay enrollment will be subject to a penalty of 1 percent per month after the close of the enrollment period on May 15, 2006.

In Kaplan's words, "A late enrollee will be accepted regardless of his or her medical condition -- unlike the medical underwriting that private insurance plans employ. But the premium that will be charged will be increased as long as the enrollee remains in Medicare Part D. Thus, a decision to defer enrollment in Part D has financial consequences if an eligible person eventually chooses to enroll in the program."

But there's an important exception: seniors who had been covered under a "creditable" drug prescription plan will not be subject to the penalty. "Creditable coverage" is defined as a drug plan that meets or exceeds the actuarial value of Medicare Part D coverage.

This could include some private-employer coverage, group health plans and veterans' drug coverage, but not most Medigap policies. (Medigap is a health insurance policy sold by private insurers to fill the "gaps" in Medicare Parts A and B).

Still another complication is the prescription drug plan's own gap in coverage, which has come to be known as the "doughnut hole."

Under the typical arrangement, the drug benefit will end once a senior reaches $2,250 in annual drug costs, and will not kick back in until drug costs exceed $5,100. The doughnut hole means that a senior who has $2,500 in drug costs will pay $1,420 out-of-pocket expenses with the drug benefit (using the government's estimated average monthly premium of $35), but will pay $3,920 -- or nearly three times more -- if drug costs reach $5,000.

"Even at a fairly catastrophic level of $10,000 per year of annual drug costs, the enrollee pays nearly 43 percent of the total bill," Kaplan noted.

Because of the doughnut hole, many retirees with existing employer-sponsored drug plans might not wish to sign up for the Medicare plan. But the caveat is that

employer-sponsored drug coverage is declining rapidly -- from 80 percent of retirees covered among major U.S. companies in 1991 to 56 percent in 2003.

Last year, the federal Equal Employment Opportunity Commission approved a rule that allows employers to reduce -- or even eliminate -- company-provided health benefits to Medicare-eligible retirees. This rule reversed the agency's prior policy that such a change violates the Age Discrimination in Employment Act.

"How much more likely will employers be to terminate their plans now that Medicare Part D provides an alternative?" Kaplan asked.

The new law does provide a federal subsidy to employers who maintain their current prescription-drug coverage for retirees. "This subsidy relates to the cost of providing drug benefits only up to $5,000 per year," Kaplan wrote. "More generous prescription drug benefits yield no additional federal subsidies to the sponsoring employers. Will those employers, therefore, modify their plans to cap an individual retiree's prescription medication expenditures at $5,000 per year? No one knows, but the stakes are huge, both for employers with existing drug benefits and for their retirees."

Adding to the confusion is the problem that predicting future drug needs -- and costs -- for seniors is often impossible.

"Many potential Medicare beneficiaries may know what drugs they need now and what they cost currently, but what will those drugs cost in the future? What if a specific drug that they need is removed from their plan's formulary, with the result that the client must pay substantially more for that drug? Such a development, which is increasingly common these days, changes the entire calculus of employer-sponsored plans and managed care plans, which typically offer widely differing prices for 'included' and 'not included' pharmaceuticals."

In sum, according to Kaplan, Medicare Part D may help many seniors save on prescription drugs, especially those with incomes below 150 percent of the federal poverty line, who will receive special discounts under the new law.

But the bottom line is that seniors will still have to pay for a large portion of their drug costs after January 2006, when the program takes effect.

What's more, selecting the best coverage for an individual "will be fraught with confusion and uncertainty" as a result of the program's enormous complexity.

Kaplan's article, "The Medicare Drug Benefit: A Prescription for Confusion," is scheduled to appear later this month in the NAELA Journal published by the National Academy of Elder Law Attorneys.