

# State Actions on Prescription Drugs: A 2004-2005 Snapshot

## National Legislative Association on Prescription Drug Prices

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presented by Richard Cauchi  
Program Director, Health Program, Denver  
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rev. 1/26/05



1

## State Pharmaceutical Assistance Programs (SPAP) and MMA

2004 Enactments:

Special attention on coordinating State Pharmaceutical Assistance programs with Medicare Discount Card transitional assistance. As of Jan. '05:

- 3 states (CT, ME, WY) have mandatory use of transitional assistance.
- 10 states (MA, ME, MI, MO, NC, NJ, NV, NY, PA, RI) have preferred or endorsed card sponsor.
- 7 states (MA, ME, MI, NJ, NY, PA, CT) have auto-enrollment in Medicare approved drug discount cards (2004 and 2005).

2

## **MMA in 2005: State Wrap-around Choices?**

- Attention in 2005 sessions will be on whether to wrap around federal benefit and if so, how?
  - Wrap around for which people? What income levels?
  - Pay deductible, Pay Co-insurance, Pay "doughnut hole"?
  - Buy supplemental coverage or make capitated payment.
  - Cover non-formulary drugs, Cover non-network drugs?
  - Use of both "qualifying SPAP" and "non-qualifying SPAP" to allow state-initiated preferred programs & enrollment?  
*(Appears to be permitted in CMS final regs. of 1/20/05)*

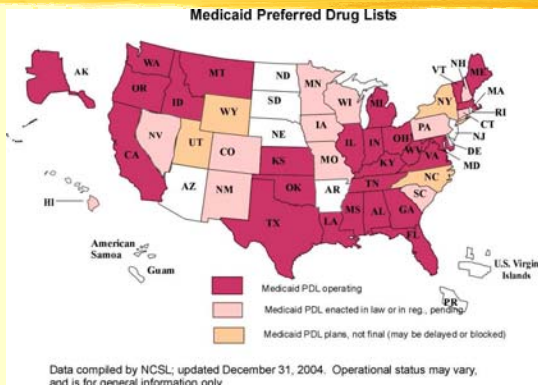
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## **MMA and Medicaid: 2005 Issues & State Roles**

- Auto-enrollment of dual-eligibles.
- Transitioning dual-eligibles.
- Low-income subsidy determinations.
- Modifications in PDLs and supplemental rebates.
- Wrap-around coverage?
- "Clawback" payments.
- Modifying nursing homes payment to account for Medicare payments for Rx.

4

## Medicaid PDLs: 38+ states



Varied designs: some use Prior Authorization vs. "evidence-based" educational efforts.

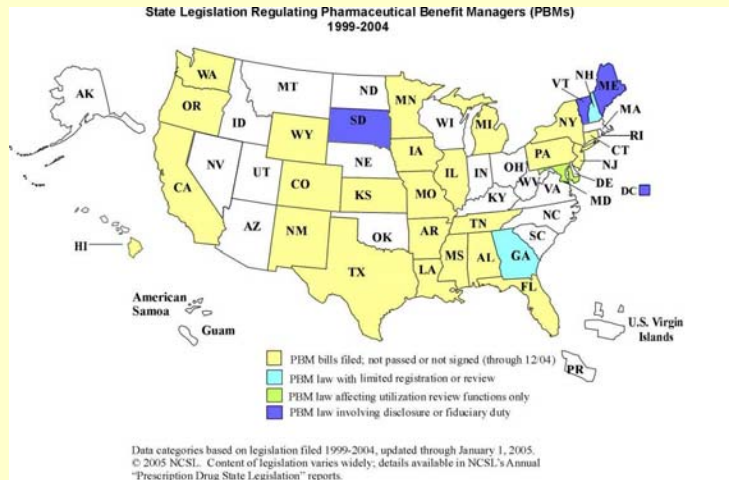
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## PBMs: The Legislatures' Role

- PBMs are a recent legislative focus.
- Initial focus: "Level the playing field" with retail druggists initiating state bills to regulate PBMs
  - Licensing and financial stability (GA 2002 law)
  - Regular reporting to state agency
  - Inspection of facilities or operation.
- Latest interests: (laws in ME, SD, DC)
  - Requiring fiduciary role and responsibility
  - Disclosure and "transparency"
  - Pass-through of rebate or discounts
- Temporary injunctions on ME & DC PBM disclosures

6

## PBM Regulation State Actions: Bills in 32 states; Laws in 6



7

## 2005 State Bill Examples: Rx Discounts for under age 65

- Nebraska: LB 712 of '05**  
 Would establish a statewide prescription drug card, called the **Healthy Nebraska Rx Card**, for people eligible for Medicare and those with a net income less than 300% FPL (up to about \$28,000 a year for individuals or \$37,500 for couples). Would require the state to negotiate with manufacturers for lower prices on a list of preferred prescription drugs.
- California (Governor)**  
 Would establish a second discount program only for residents under age 65, using a contracted PBM for operations.

8

## 2005 New Issue: Disclosure of Clinical Drug Trials

- **2005 California proposal (AB 72)**
  - Requires manufacturers to submit report to the state of health studies that have been or are being conducted by or on behalf of any drugs company is selling in the state. State may use civil action to enforce reporting.
- **2005 Maryland bill (HB 54)**
  - Requires listing in HHS databank before state participants are enrolled.
- **Area of interest in other states.**

9

## The 340B Drug Discount Program

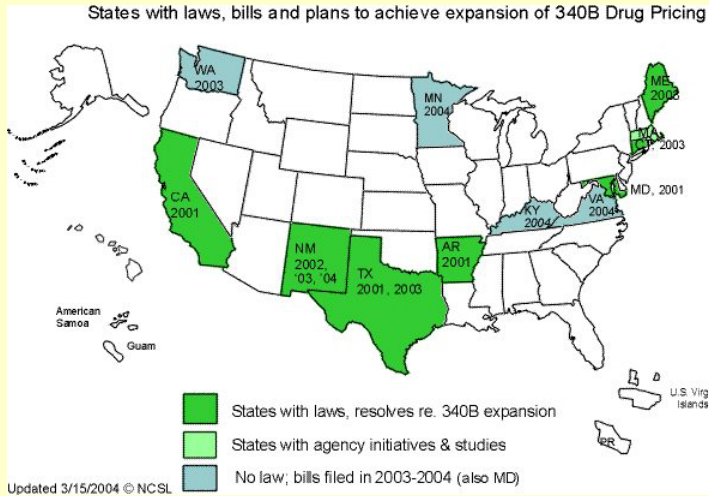
- 340B Established by Congress in '92; Requires manufacturers to sell covered outpatient drugs to certain safety net providers at a statutory discount – at least as low as Medicaid “best price”; Saves eligible purchasers an average 50% off AWP.
- Rapid spread of 340B approved Pharmacies. 1,025 new in 1 year (January 1, 2005) – **Examples >>**

State	2005	2004	# added	% added
CA	1044	965	+79	8%
HI	78	42	+36	85%
MA	222	187	+35	19%
NV	78	63	+15	24%
NY	709	599	+110	18%
<b>Total</b>	<b>11911</b>	<b>10886</b>	<b>+1025</b>	<b>9.4%</b>

10

# State laws encouraging 340B

(map includes bills and agency actions)



11

## 340B State Law Expansion Examples

- **New Mexico: 2003 law:** Requires Medicaid to “identify entities that are eligible to participate in 340B”
  - **2004: Requires public program use of 340B:** “all programs, clinics, hospitals and other health-related centers and entities, including [for Medicaid], that are eligible under Section 340B..., including hospitals and clinics under the state Public Health Act, shall participate in” the 340B program. (Chapter 47, signed March 3, 2004)
- **Texas:** Authorizes the Texas Department of Criminal Justice to provide Rx to the **Texas prison population** through the 340B (law: SB 347 of 2001)
  - “**Community mental health centers** may form a referral relationship with community health centers, federally qualified health centers... to obtain federal 340B pricing.” (law: HB 2292 of 2003)

12

## MMA Expands 340B Options

- Section 402: “Enhanced Treatment for Rural Hospitals and Urban Hospitals with Fewer than 100 Beds.” Increased Medicare DSH cap of some hospitals from 5.25% to 12%.
  - 340B Impact: More rural & small urban DSH hospitals are eligible to participate in 340B Drug Pricing Program.
- Section 1002: Amends Medicaid Rebate Law to exclude inpatient prices from best price reporting by drug manufacturers.
  - 340B Impact: Possible discounts on inpatient drug purchases to participating 340B hospitals.
- HRSA Ruling: Medicare Approved Cards can be used in conjunction with 340B approved pharmacies.

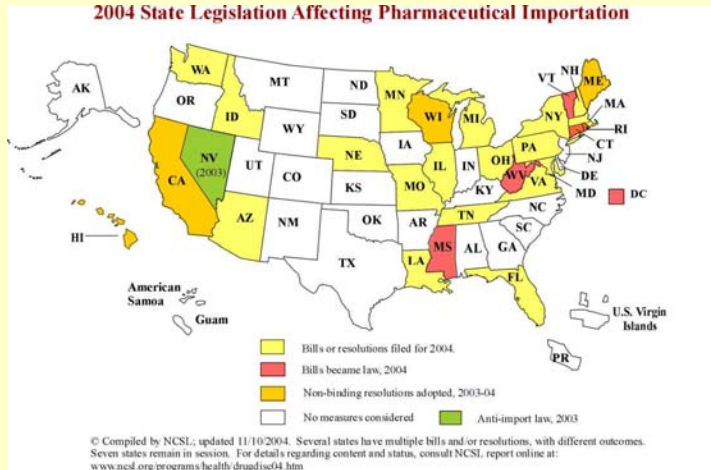
SOURCES: Diane Goyette, PSSC/HRSA 9/29/04; HRSA guidance to pharmacies, 8/04

## Rx Importation: Multiple state approaches in '04-05

1. **Require establishing a state web site.** *(HI, MA, MN, VT, WA)*
  2. **Authorize the state Rx programs to purchase Canadian Rx drugs**  
*(CA, HI, WA)*
  3. **Allow Medicaid program to purchase prescriptions via Canada.**  
*(MS, CA)*
  4. **Allow pharmacies in Canada to get a license from the state.** *(IL, RI)*
  5. **Allow state employees to buy Rx from Canada with state funds.**  
*(MA, MN, OH)*
  6. **Require health insurers to provide coverage for drugs purchased in Canada.** *(Vermont)*
  7. **Join a multi-state compact including a Canadian province.** *(MI)*
  8. **Require state to evaluate the feasibility, health and safety, legal sufficiency and cost effectiveness of reimporting Rx.**  
*(CT, WV, VA)*
  9. **Non-binding resolutions or memorials to urge U.S. Congress or HHS to allow or certify prescription drug importation.**  
*(Various states)*
- 2005:** *Would allow pharmacists to purchase Rx reimported from Canada (OK)*

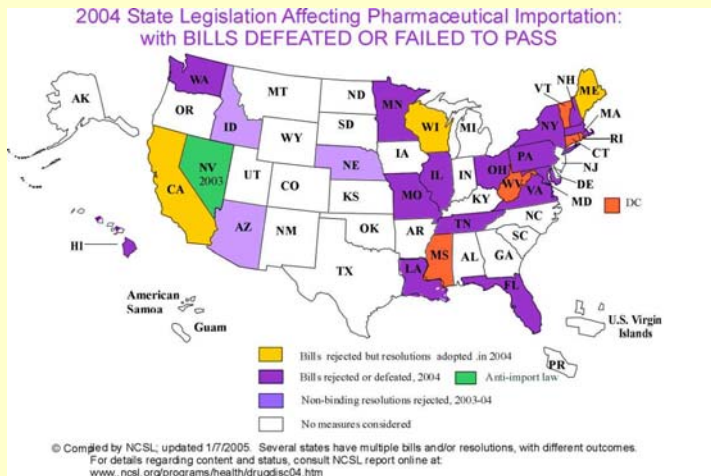


# States considering Rx import bills, #1



17

# States considering Rx import bills, #2



18