

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
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**CENTER FOR DRUG AND HEALTH PLAN CHOICE**

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TO: All Part D Sponsors

FROM: Cynthia G. Tudor, Ph.D., Director, Medicare Drug Benefit and C&D Data Group

SUBJECT: Reminder on Long-Term Care Pharmacy Contracting

DATE: November 25, 2008

The purpose of this communication is to remind Part D sponsors of the requirement to (1) provide convenient access to network long-term care (LTC) pharmacies to all of their enrollees residing in LTC facilities, and (2) exclude payment for drugs the are covered under a Medicare Part A stay that would otherwise satisfy the definition of a Part D drug.

CMS expects that long-term care (LTC) pharmacy contracting will be ongoing as Part D sponsors continue to identify LTC facilities and LTC pharmacies, and as they examine their auto-enrollment assignments and incoming enrollments. We also note that the convenient access requirements apply even when the LTC facility in which an enrollee resides does not contract with an LTC pharmacy in a sponsor's network. In order to ensure compliance with the LTC pharmacy convenient access requirements, sponsors must either contract with the LTC facility's contracted pharmacy or provide the enrollee with covered Part D drugs via another network LTC pharmacy. Encouraging enrollees to enroll in another plan during the annual open election period, or through the special election period for institutionalized beneficiaries, in lieu of contracting with an LTC pharmacy to provide covered Part D drugs to a facility's residents is not permitted. Such activities on the part of either the LTC care facility or LTC pharmacy are also prohibited, and may violate other federal laws.

**Reminder on Previous CMS Guidance**

We recognize that sponsors cannot compel particular LTC pharmacies to contract with them. We are also aware that not all States have "right-to-choose" laws in effect that allow LTC facility residents to choose their pharmacies, which often binds an LTC facility resident to using only the LTC pharmacy with which the facility contracts. We remind sponsors that CMS issued guidance in 2006 to State nursing home survey agency directors that emphasizes our expectation that nursing homes will not frustrate a beneficiary's choice in Part D plans, and will work with pharmacies to ensure that that they contract with the Part D plans chosen by that facility's Medicare beneficiaries, or that they contract with additional or different pharmacies to achieve that objective. This guidance can be located at <http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter06-16.pdf>.

We also remind sponsors that, as provided in section 50.5.3 of Chapter 5 of the Prescription Drug Benefit Manual, Part D sponsors will be out of compliance with uniform benefits requirements to the extent that they agree to particular contracting terms and conditions that have the net result of creating a non-uniform benefit for plan enrollees residing in certain LTC facilities. It is very important that, as sponsors negotiate with LTC pharmacies for inclusion in their networks, they are acutely aware that they cannot agree to differential benefits that would result in non-uniform benefits among enrollees in LTC facilities (e.g., extended transition periods, certain utilization management edits, or different drug utilization review protocols limited to LTC enrollees obtaining their drugs from a specific LTC pharmacy).

### **Reminder to Exclude Part D Payment for Drugs Covered Under Medicare Part A Covered Stays**

Some Part D enrollees residing in an LTC facility may have their stay, or part of their stay, covered by Medicare Part A. If Medicare Part A pays for an enrollee's stay in an LTC facility, Medicare Part A (and Part B, in some cases) will also pay for an enrollee's prescription drugs during the Part A covered stay. Part D sponsors cannot pay for an enrollee's prescription drugs covered by Medicare Part A because the Medicare Modernization Act excludes such drugs from the definition of a Part D drug.

CMS recognizes that Part D sponsors may not be able to prospectively or concurrently distinguish drug claims for enrollees residing in long-term care that are covered by Medicare Part A from those that are not covered by Medicare Part A. Therefore, CMS expects Part D sponsors to employ alternative measures to prevent inappropriate Part D payment for such drugs covered by Medicare Part A. These measures should include LTC pharmacy contracting provisions that prohibit billing for drugs covered by Medicare Part A and that require LTC pharmacies to retrospectively review for Part A eligibility with their contracted LTC facilities, reverse ineligible Part D claims, and refund beneficiaries that inappropriately paid Part D cost-sharing. Moreover, Part D sponsors should continue to remind network LTC pharmacies not to bill Part D for drugs covered by Medicare Part A and incorporate provisions into their retrospective utilization review and pharmacy audit strategies that target potential ineligible Part D payments for drugs covered by Medicare Part A. Any Part D sponsor that anticipates significant retrospective adjustments to beneficiary cost-sharing as a result of retrospective determinations of Part A coverage should prospectively alert their CMS account manager.

### **Announcement of Upcoming Institutional Data Files**

Finally, we would like to announce that, effective 2009, Part D sponsors will receive lists twice per year (in April and September) of their institutionalized enrollees via secure Gentran mailboxes. These files will better allow Part D sponsors to determine which of their enrollees are institutionalized, as well as the names and addresses of the particular LTC facilities in which they reside. We have been working for some time to make this information available to sponsors based on MDS data, and we believe that access to this information will greatly facilitate LTC pharmacy contracting efforts and potentially assist with preventing Part D payment for drugs covered by Medicare Part A. We will issue further information on this notification process in 2009.

We appreciate your continuing efforts to ensure that institutionalized Part D enrollees have convenient access to their Part D benefits via network LTC pharmacies. If you have any questions concerning this memorandum, please contact Vanessa Duran via email at [vanessa.duran@cms.hhs.gov](mailto:vanessa.duran@cms.hhs.gov) or by phone at 410-786-8697, or Marla Rothouse via email at [marla.rothouse@cms.hhs.gov](mailto:marla.rothouse@cms.hhs.gov) or by phone at 410-786-8063.