



CENTER FOR BENEFICIARY CHOICES

MEMORANDUM

TO: All Part D Sponsors

FROM: Cynthia G. Tudor, PhD, Director, Medicare Drug Benefit Group

RE: ICF/MR and IMD Pharmacy Network Contracting

DATE: September 13, 2006

Through the initial application process to become a Part D sponsor, your organization was successful in establishing a long-term care (LTC) pharmacy network that met the Centers for Medicare & Medicaid Services (CMS) regulatory requirements. CMS wants to remind all Part D plan sponsors of their continued contractual obligation to have a LTC pharmacy network that provides convenient access for beneficiaries living in LTC facilities in their service area, as provided in 42 CFR 423.120(a)(5).

Given the continued increase of institutionalized auto-enrollees in some Part D sponsors' plans throughout the contract year, sponsors must monitor their LTC pharmacy networks to ensure that they remain in compliance with the LTC convenient access requirements. In particular, Part D sponsors must provide convenient access to network LTC pharmacies for all of their enrollees living in intermediate care facilities for the mentally retarded (ICFs/MRs) and institutes for mental disease (IMDs) for which payment is made for an institutionalized individual under Section 1902(q)(1)(B) of the Social Security Act.

In order to meet the CMS requirements, Part D sponsors should be prepared to expand their networks throughout the year to ensure that all enrollees living in LTC facilities, including ICFs/MRs and IMDs, have access to a network LTC pharmacy. To the extent that the LTC convenient access requirement conflicts with any LTC standard contract term or condition, Part D sponsors must modify their standard contracting terms and conditions in order to comply with CMS requirements.

In previous guidance, CMS clarified that in many instances ICFs/MRs and IMDs use in-house pharmacies and, in some cases, these pharmacies are State run and operated. In addition, some States' licensing laws only allow LTC facilities to get prescription drugs and services for their residents from the in-house pharmacy. This means that States may not be able to agree to certain standard clauses in some LTC standard contracts because of constitutional and legal restraints on States. Part D sponsors should be prepared to readily negotiate with States to address these issues.

For those State-run ICFs/MRs and IMDs in which Part D beneficiaries live but the State has been unable to contract with Part D sponsors, CMS expects the Part D sponsors to work with the States to reach agreement and enter into a contract. . In this instance, failure to enter into a contract may lead to CMS taking immediate compliance actions, including civil monetary penalties, if it results in an inability to deliver Part D drugs to enrollees living in these facilities. In some instances, a retroactive contract may be necessary

If you have any comments or questions, please feel free to contact your CMS account manager.