

IssueBrief

RETAIL PHARMACY CONTRACTING
ISSUES WITH MEDICARE PART D PLANS

July 5, 2005

As the August 1st pharmacy access analysis deadline approaches for Part D plans, community retail pharmacies need as much information as possible to determine whether they want to contract with Part D plans to be included in their pharmacy networks. The Centers for Medicare and Medicaid Services (CMS) has verbally provided guidance to pharmacies on some issues, while other key issues remain unresolved. This document describes the key unresolved issues relating to retail pharmacy participation in Part D plan networks.

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Allowing Participation of “Any Willing Retail Pharmacy” in the Network to Provide Extended Supplies

- **Issue:** The MMA and the final CMS regulations give the beneficiary the choice of obtaining the same benefits through a retail pharmacy if they are provided by the plan through a mail order pharmacy. This may include a 90-day supply, or extended supply, of covered Part D drugs. For example, the final regulation’s preamble “requires Part D plans to permit enrollees to receive extended supplies (for example, 90 day supplies) of Part D drugs through a network retail pharmacy” (See Attachment 1). However, CMS guidance contravenes the law and the regulation by only requiring that plans contract with an unspecified “sufficient” number of retail pharmacies to offer an extended supply.
- **NACDS Response:** The most recent CMS guidance on this issue denies the beneficiary the choice of obtaining their extended supplies at network retail pharmacy by permitting Part D plans to only contract with sufficient number of pharmacies to provide beneficiaries with “reasonable” access to extended supplies at retail pharmacies. The “any willing pharmacy” provision of the law was not drafted specifically for “acute” medications, and it was included to assure that Part D plans did not unfairly force beneficiaries to use mail order by restricting access. Many retail pharmacies want to supply these extended supplies, and are willing to do so at a higher rate (alternative mail/retail rate) than the mail order rate, but are not being given the opportunity to contract with Part D plans to do so. CMS indicated in its meeting with NACDS on June 23rd that retail pharmacies would be able to provide an extended supply of drugs at the mail order rate, but be able to set their own higher co-pays. We ask that this be clarified in writing as soon as possible.

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Allowing Any Willing Pharmacy to Join the Part D Network at any time

- **Issue:** Part D plans cannot include a “term or condition” in their standard contract that requires pharmacies to join a Part D network by a certain date or risk being “locked out” of the network for the full plan year. For example, one Part D plan recently indicated to pharmacies that they would not be able to participate in their network for a full year if they didn’t contract with the plan by July 1, 2005. Part D plans cannot limit the time frame during which a retail pharmacy can join the network if the pharmacy is willing to meet the terms and conditions. (See Attach. 2)
- **NACDS Response:** The MMA indicates that the Part D plans must permit the participation of “any willing pharmacy” that meets the plans terms and conditions. CMS has indicated that, supporting NACDS Response, “AWP” is not time limited. Plans must continue to contract with willing retail pharmacies at any time, and certainly after the August 1 pharmacy access analysis deadline.

Providing Extended Day Supply if the Network Retail Pharmacy is Not Under Contract to Provide Such Supplies

- **Issue:** The ability of Part D plans to exclude certain network retail pharmacies from offering extended days supply of covered Part D drugs will discriminate against many dual eligible Medicare beneficiaries because they will have to change their pharmacy to obtain the extended day supply. That is because millions of dual eligibles and other low income populations will be “randomly enrolled” in Part D plans, and many may choose to obtain an extended supply of Part D drugs at their local network retail pharmacy. However, if the network retail pharmacy or pharmacies used by the individual are not under contract to the Part D plan to provide an extended supply, then the individual will not have the benefit of being able to obtain an extended supply of covered drugs at the network retail pharmacy. On the other hand, some randomly-enrolled beneficiaries will not have to change pharmacies to obtain their extended day supply because the beneficiary’s retail pharmacy is under contract as a network retail pharmacy with the Part D plan. This policy discriminates against many dual eligibles.
- **NACDS Response:** As we note above, we believe that all willing retail pharmacy should be allowed to contract with Part D plans to provide extended supplies of covered Part D drugs to beneficiaries. Pharmacies that want to provide these drugs at the mail rate should be able to do so, and pharmacies that cannot accept the mail order rate, but can accept an alternative rate, should be able to do so as well.

Requiring that Part D plans offer separate Part D contracts to retail Pharmacies

- **Issue:** Some Part D plans are telling pharmacies that they are going to include the pharmacy in the Part D plan’s Medicare Part D network as an extension of the contract that they already have with the pharmacy to provide service to the plan’s commercial non-Medicare business. That is, they are not giving the pharmacy the choice to join the plan’s Part D network.

However, CMS has said that they reviewed many of the existing PBM commercial contracts and found them to lack many of the elements that CMS wants to see in a Part D-pharmacy contract.

- **NACDS Response:** Part D plans must offer each pharmacy a separate and distinct contract to participate in the plan's Part D network, apart from any existing contracts the Part D plan or its PBM subcontractors might already have with the retail pharmacy for the non-Medicare business. We would like CMS to clarify this in a FAQ document.

Allowing Retail Pharmacies to Accept the “Preferred” Network Rate if they Choose

- **Issue:** Some retail pharmacies are being designated by the Part D plan as “non-preferred”, but are willing to accept the Part D plan's rates to participate as a “preferred” pharmacy.
- **NACDS Response:** Retail pharmacies that want to fill prescriptions at the network's preferred pharmacy rate should be allowed to do so. This will lower Medicare's costs, Medicare beneficiaries' cost sharing obligations, as well as reduce the plan's overall drug costs.

10-Year Record Keeping Requirements

- **Issue:** CMS has issued a draft written response that clarified some of the issues relating to the “10-year recordkeeping requirements.” For example, in that draft response, pharmacies have to maintain the prescription record in the format in which it was originally received for 3 years or the period required by State law, whichever is greater. Prescriptions can then be transferred to an all-electronic format and stored. While allowing for electronic storage is positive, the 10-year record keeping requirement is likely to mean that pharmacies will keep all their prescription records for 10 years, since they are not likely to separate out these Medicare Part D prescriptions from other prescriptions.
- **NACDS Response:** The 10-year record keeping is too long a period of time for pharmacies to keep these prescription records. Right now, Medicare prescription documentation only has to be retained for a period of 7 years, and this is the way that most pharmacy systems are currently configured. Moreover, as long as it is easily retrievable, prescription information that has to be stored electronically can be maintained in an off site or corporate location, but does not have to be stored on the actual pharmacy location. The documents that pharmacies have to retain should be limited to the actual prescription, and should not include contracts, remittance information, prescription logs, or prescription claims data. We ask that CMS address this issue as soon as possible given that pharmacies need to know what information that need to keep, and set up the systems to do so, by January 1.

Use of Standard Commercial Prompt Pay Terms

- **Issue:** Some Part D plans are indicating that they will pay pharmacies within 30 to 45 days of submitting prescription claims, rather than the industry standard or weekly or biweekly. This will create cash flow problems for retail pharmacies, especially those that have an especially significant number of Medicare beneficiaries that use that pharmacy.
- **NACDS Response:** In theory, Part D plans can transfer funds electronically to pharmacies in a real time manner once the claim has adjudicated. Thus, any unnecessary delay in paying pharmacies for prescriptions dispensed is unacceptable. However, at a minimum, CMS should clarify for plans that the payment terms should be no less favorable than the industry's current standards, which is 14 days.

G: FedState / Fed / Medicare Implementation/ Outstanding Retail Pharmacy Contracting Issues...

Level Playing Field Between Mail Order and Network Pharmacies

MMA

D) LEVEL PLAYING FIELD.—Such a sponsor shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a pharmacy (other than a mail order pharmacy), with any differential in charge paid by such enrollees.

CMS Regulations

423.120(a)(10): A Part D sponsor must permit its Part D plan enrollees to receive benefits, which may include a 90 day supply of covered Part D drugs, at any of its network pharmacies that are retail pharmacies.

Final Regulation Preamble

p. 4247: “Section 1860D-4(b)(1)(D) of the Act requires Part D sponsors to allow their enrollees to receive benefits at a network retail pharmacy instead of a network mail order pharmacy if they so choose.”

p. 4255: “We clarify that section 1860D-4(b)(1)(D) of the Act, and section 423.120(a)(10) of our final rule require Part D plans to permit enrollees to receive extended supplies (for example, 90 day supplies) of Part D drugs through a network retail pharmacy.”

Guidance

1st guidance – “we expect that plans will include in their contracts with retail pharmacies a provision that will allow a retail pharmacy to offer an extended supply...at the same price...as the plan’s mail order pharmacy or pharmacies.” “A plan may allow retail pharmacies to dispense an extended supply of drugs for a higher contracted reimbursement rate...”

2nd guidance – “CMS further expects that Part D plans will contract with a sufficient number of network retail pharmacies so as to ensure that enrollees have reasonable access to the same extended day supply benefits at retail that are available at mail order.”

Any Willing Pharmacy Provisions

MEDICARE MODERNIZATION ACT

Adding section 1860D-4(b)(1)(A):

“PARTICIPATION OF ANY WILLING PHARMACY.—A prescription drug plan shall permit the participation of any pharmacy that meets the terms and conditions under the plan.”

CMS FINAL RULES

Section 423.120(a)(8):

“*Pharmacy network contracting requirements.* In establishing its contracted pharmacy network, a Part D sponsor offering qualified prescription drug coverage—

(i) Must contract with any pharmacy that meets the Part D plan’s standard terms and conditions....”

Section 423.505:

“(a) *General rule.* The contract between the Part D plan sponsor and CMS must contain the provisions specified in paragraph (b) of this section.

(b) *Requirements for contracts.* The Part D plan sponsor agrees to— . . .

(18) To agree to have a standard contract with reasonable and relevant terms and conditions of participation whereby any willing pharmacy may access the standard contract and participate as a network pharmacy.”