

Long-Term Care (LTC) Convenient Access Standard Statement

On March 16, 2005, CMS released guidance to assist Part D plans in formulating policies for the implementation of CMS requirements regarding access to LTC pharmacies for Part D enrollees residing in LTC facilities (please refer to Attachment A). Since that time, Part D plans have established LTC pharmacy networks in preparation for implementation of the Part D benefit. While all plans have met CMS's LTC pharmacy network submission requirements as part of the application approval process, we note that nothing precludes Part D sponsors from continuing their contracting efforts both before and after the benefit begins on January 1, 2006.

In fact, we know that continued contracting will be necessary in order for plans to meet the LTC convenient access standard articulated in 42 CFR 423.120(a)(5). As stated in our March 2005 guidance (attached), plans must establish a network of LTC pharmacies that provides convenient access to LTC pharmacies for enrollees residing in LTC facilities. Plans may not rely on out-of-network access to meet the convenient access standard. All of a plan's institutionalized enrollees must be able to routinely receive their Part D benefits through the plan's network of pharmacies in order for a plan to be in compliance with our LTC convenient access standard.

In addition, neither Part D plans nor providers may rely upon beneficiary special enrollment periods (SEPs) to circumvent the LTC convenient access requirement. Although individuals moving into, residing in, or moving out of an institution are entitled to a SEP, and dually eligible individuals are entitled to an ongoing SEP for as long as they are eligible for Medicaid benefits, it is not acceptable for plans to rely on this beneficiary option in lieu of contracting with a sufficient number of pharmacies to ensure that a beneficiary can remain in his or her current plan for as long he or she resides in a LTC facility in the plan's service area. In the interest of assisting Part D plans in discharging their requirements under the convenient access standard, we believe it is imperative that LTC pharmacies not withhold contracts with Part D plans to limit the number of plans to which a facility's beneficiaries have access. Ultimately, we believe all beneficiaries – including those who reside in LTC facilities – should have available to them the full array of plans operating in their area.

Therefore, in order to facilitate plan compliance with the LTC convenient access standard, we strongly encourage plans to contract with LTC pharmacies serving all the LTC facilities in which their enrollees might reside as soon as practicable. We expect this contracting activity will be ongoing as plans continue to identify LTC facilities and LTC pharmacies, and as they examine their auto-enrollment assignments and incoming enrollments. To the extent that a beneficiary is enrolled in a plan that does not have a contract with a LTC pharmacy that can serve the LTC facility in which he or she resides, the appropriate action for a plan to take is to contract with the facility's contracted LTC pharmacy or – if that pharmacy will not sign a contract – with another LTC pharmacy that can serve that facility. In some cases, a retroactive contract may be necessary. We expect that LTC facilities will strongly encourage their contracted LTC pharmacies to

contract with every plan available in the relevant service area, since Part D payment will not be available to a LTC pharmacy that does not contract with a plan.

We are aware that there may be several issues associated with the current operations of some LTC pharmacies – for example, multiple claim formats, post-consumption billing, and potential delays in billing due to systems and other start-up issues – that may delay contracting negotiations between plans and LTC pharmacies. We expect to release additional guidance on some of these issues but, in the meantime, we recommend that plans be flexible and able to readily negotiate with LTC pharmacies regarding these and other contracting issues. We recognize that these issues may be more prevalent when contracting with in-house and state run and operated LTC pharmacies and have provided separate guidance on that issue (see Attachment B).

We also reiterate our previous guidance that any pharmacy – whether it is a LTC or retail pharmacy – that can meet the ten performance and service criteria outlined in our March 2005 LTC Guidance and is willing to accept any other standard contracting terms and conditions established by the plan for its network pharmacies can participate as a LTC network pharmacy. As clarified in previous guidance, this means that network LTC pharmacies must have the capability to meet the performance and service criteria, either directly or through a subcontractor. It does not mean that prospective LTC network pharmacies must show that they currently provide such services or that they could provide all these service directly. The actual services that must be provided by the LTC network pharmacy will depend on the specific needs of the specific LTC pharmacies serviced by the pharmacy.