

Q: What is CMS's policy regarding emergency supply of medications for long term care residents? Are plans required to cover a temporary/emergency supply of non-formulary Part D drugs while an exception request is being processed?

A: After careful consideration of current industry standards, we believe that Part D plans must cover an emergency supply of non-formulary Part D drugs for long term care residents as part of their transition process. This policy represents a further clarification of our March 16, 2005 Long Term Care Guidance. In that document, we indicated that each Part D plan sponsor must have procedures in place for addressing the needs of Part D enrollees who reside in LTC facilities, with particular attention to situations where there is a disparity between the Part D requirements and the Medicare Conditions of Participation (COP) for LTC facilities. We further noted that Part D sponsors must clearly articulate the financial responsibility of the plan in such situations. In circumstances where current enrollees have an immediate need for a non-formulary Part D drug, we recommended that plan sponsors consider a one-time temporary or emergency supply process as a method of ensuring that such enrollees do not have a coverage gap while processing an exception or appeal request.

Based on discussions with the long term care industry, we understand that, as matter of general practice, long term care residents must receive their medications as ordered without delay. In response to their complex needs and circumstances, an emergency supply or "first fill" policy is the industry standard for long term care residents. For plan sponsors to not offer such a supply would essentially have the effect of making benefit packages that are outliers -- thereby discouraging enrollment by long term care residents. For this reason, we believe that all part D plans must cover a temporary supply of non-formulary part D drugs while an exception is being adjudicated.

Our preamble to the final rule for the Medicare prescription drug benefit discussed the issue of a temporary or emergency supply in reference to the appeals statutory authorities. It was not focused specifically on the situation involving long term care residents with an immediate need for a prescription where the industry standard is to allow for such a supply. Our requirement that plans cover a temporary supply for long term care residents is based on our position that to not do so would be discriminatory.