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Submitted via Electronic Filing: PartDPaymentPolicy@cms.hhs.gov

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Centers for Medicare & Medicaid Services
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Attn: PO Box 8016

Re: Medicare Prescription Payment Plan: Draft Two Guidance on Select Topics, Implementation of Section 1860D-2 of the Social Security Act for 2025, and Solicitation of Comments

Dear Dr. Seshamani:

The Senior Care Pharmacy Coalition (“SCPC”) appreciates the opportunity to provide comments on the February 15, 2024 memorandum issued by the Centers for Medicare & Medicaid Services (“CMS”), entitled *Medicare Prescription Payment Plan: Draft Part Two Guidance on Select Topics, Implementation of Section 1860D-2 of the Social Security Act for 2025, and Solicitation of Comments* (the “Draft Guidance”), and particularly Sections 50.3.1 and 50.4 of the Draft Guidance. While we appreciate that the Draft Guidance recognizes there is no “point of sale” for long-term care (LTC) pharmacy, the Draft still does not properly account either for how LTC pharmacies dispense first and collect co-pays later, or the process by which LTC pharmacies adjudicate claims.

For these reasons, more fully explained below, **we urge CMS to revise Sections 50.3.1 to clarify that Plans should not require LTC pharmacies to provide beneficiary notices.** The Draft Guidance’s proposals for LTC pharmacies remain unnecessarily complex and costly, and will not benefit beneficiaries, pharmacies, or the Medicare program. Rather, it is likely to cause significant more work for LTC pharmacies that at a minimum will need to re-adjudicate claims and will cause beneficiary confusion.

About SCPC: SCPC is the only Washington-based organization exclusively representing the interests of long-term care (LTC) pharmacies. SCPC's membership includes 75% of all independent LTC pharmacies. Our members serve one million residents daily in skilled nursing facilities and assisted living communities across the country. Given the distinct characteristics of the LTC patient population and the enhanced clinical responsibilities of LTC pharmacies, we offer unique perspectives on CMS' initiatives and proposals, particularly how Medicare Prescription Drug Benefit (Part D) policies and requirements impact Part D enrollees with institutional level of care needs and the LTC pharmacies that serve them.

Full Benefit Dual Eligible ("FBDE") Residents of LTC Facilities Should be Categorically Exempt from the Guidance's Proposed Pharmacy Requirements: Before addressing the specifics of the Proposed Guidance, we again urge CMS to recognize and acknowledge that residents of long-term care facilities, including both residents of skilled nursing facilities and assisted living facilities, typically are dually-eligible for both Medicare and Medicaid, and as such *do not pay co-pays* on their medications. Consequently, many of the proposals in the Draft Guidance are not relevant to the LTC patient population or to LTC pharmacies. **We urge CMS to clarify the final guidance will not apply to FBDEs residing in LTC facilities.**

Since LTC pharmacies also serve Part D beneficiaries residing in assisted living facilities and other community-based settings, including at home, we address other concerns about the Draft Guidance below.

Section 50.3.1 – LTC Pharmacy Notice Requirements: SCPC appreciates the agency's acknowledgement of its prior comments that there is no "point of sale" in most LTC pharmacy transactions, and is grateful for the agency's statement that: "[l]ong-term care pharmacies typically do not have a POS encounter between the pharmacy and the enrollee (long-term care resident)." We also appreciate that CMS recognizes that "the pharmacy delivers medications that are kept in the custody of long-term care facilities until time of administration. In addition, long-term care pharmacies often use retrospective or post-consumption billing (i.e., billing after the drug is dispensed to the facility for an enrollee)." We thank the agency for its conclusion that, as regards LTC pharmacy, "the plan sponsor is not required to ensure that the long-term care pharmacy provides the "Medicare Prescription Payment Plan Likely to Benefit Notice" prior to dispensing the medication," urge the agency to finalize that conclusion, and urge the agency to clarify that the conclusion applies to all types of long-term care facilities including assisted living facilities and other congregate living facilities as well as patients residing at home but requiring LTC pharmacy services.

We are, however, still concerned about the Draft Guidance statement that the "the plan sponsor can require the long-term care pharmacy to provide the notice to the Part D enrollee at the time of its typical billing process" and the confusing use of "not require" and "can require." Further, it is unclear what CMS means by "the typical billing process." The draft could be read as meaning either the billing to the plan or the typical billing of co-payments to beneficiaries. Further, there remain many instances where even during the billing process there is no direct communication with the beneficiary.

For these reasons, we urge the agency to rewrite the last two sentences of the paragraph as follows (redlined text shown):

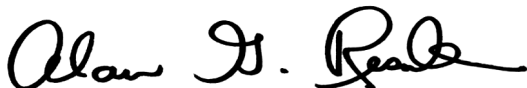
Long-term care pharmacies typically do not have a POS encounter between the pharmacy and the enrollee (long-term care resident). In these cases, the pharmacy delivers medications that are kept in the custody of long-term care facilities until time of administration. In addition, long-term care pharmacies often use retrospective or post-consumption billing (i.e., billing after the drug is dispensed to the facility for an enrollee). As such, ~~when the POS notification is received by a long-term care pharmacy,~~ the plan sponsor ~~should not require~~ ~~is not required to ensure~~ that the long-term care pharmacy provides the “Medicare Prescription Payment Plan Likely to Benefit Notice” ~~or any other related notification~~ prior to dispensing the medication. Instead, the plan sponsor can ~~require request~~ the long-term care pharmacy ~~attempt~~ to provide the notice to the Part D enrollee (~~or their representative~~) at the time of its typical ~~co-payment~~ billing process.

We believe these changes will more accurately reflect how LTC pharmacies operate and interact with beneficiaries, and will more appropriately guide all stakeholders on whether and how the “Likely to Benefit” notice should be circulated.

Section 50.4 -- Readjudication: The proposed guidance also includes a readjudication section pertaining to cases where a beneficiary presents a prescription at a retail setting but declines to purchase the drug and then later makes a Payment Plan election. Because this scenario never occurs in the LTC pharmacy context given that LTC pharmacies dispense first and bill later, we urge the agency to address LTC pharmacy in Section 50.4 and to clarify that no readjudication is required of LTC pharmacies.

Thank you for your consideration. If you have questions or wish to discuss our comments, please feel free to contact me at arosenbloom@seniorcarepharmacies.org or (717) 503-0516.

Respectfully submitted,



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