

May 31, 2006

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

**Re: Contract Year (CY) 2007 Medicare Marketing Guidelines**

Dear Centers for Medicare & Medicaid Services (CMS):

The National Community Pharmacists Association (NCPA) respectfully submits the following comments regarding the contract year (CY) 2007 Medicare Marketing Guidelines. NCPA represents the nation's community pharmacists, including the owners of more than 24,000 pharmacies. The nation's independent pharmacies, independent pharmacy franchises, and independent chains dispense nearly half of the nation's retail prescription medicines.

**Co-branding of Explanatory Materials (page 11)**

Co-branding by provider groups on plan explanatory materials implies to beneficiaries that they are only allowed to use certain providers to obtain Part D prescription drug benefits. NCPA supports the decision by CMS to prohibit provider co-branding on member identification cards. However, provider co-branding on other explanatory materials such as enrollment letters/forms, pharmacy directories, and summary of benefits also implies to beneficiaries that they must go to those co-branded providers to obtain Part D coverage. NCPA strongly recommends that provider co-branding be prohibited on all explanatory materials for CY 2007 to avoid further confusion.

**Development of Marketing Materials - Subcontractor Use (page 14)**

Since pharmacies are considered contracted entities (subcontractors) to Part D plans, this provision potentially applies to the over 58,000 retail pharmacies. Pharmacies may be distributing plan-developed information. This new requirement on pharmacies to report use of marketing materials to the plan is an overly burdensome requirement to place on both pharmacies and plans to coordinate this communication to CMS on already approved materials by CMS. NCPA recommends that this requirement be clarified so that it clearly states that it does not apply to the general provision by pharmacies of plan materials previously approved by CMS, and covered under the marketing guidelines related to provider activities. Alternatively, we urge CMS to consider simply having Part D plans indicate in the materials they submit to CMS whether the plan anticipates providing the materials to pharmacies for distribution to beneficiaries and that no special additional reporting by pharmacies and plans be required.

### **Benefit Changes in Marketing Materials (page 18 and 25)**

Any changes to the prescription drug benefit (particularly modifications to formularies and pharmacy access) cause significant confusion to Medicare beneficiaries, especially seniors. The proposed disclaimer is critically important to convey to Medicare beneficiaries especially during advertisement. Therefore, NCPA recommends that CMS consider requiring a more prominent display of the disclaimer in at least 14 point font.

### **Scripts (page 28)**

CMS had recognized that freedom of choice of providers within a plan's pharmacy network is very important for Medicare beneficiaries. Consequently, NCPA urges CMS to add a note to this section to prohibit any language which steers beneficiaries inappropriately to preferred pharmacies by implying that prescription drug benefits are deficient or not available through non-preferred pharmacies.

### **Required Pharmacy Information (page 50)**

The Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204) dictates that non-publicly traded companies should be classified as independent entities. As such, NCPA members include all non-publicly traded pharmacies, including franchises and numerous small chains. In this section, CMS defines independent community pharmacies as "non-chain pharmacies." This classification is confusing for pharmacy owners who own and operate several pharmacies but remain not publicly traded. Therefore, we ask CMS to amend their definition of chain pharmacies to "publicly held chain pharmacies".

### **Mail Order Prescription Drug Services (page 51)**

NCPA requests that CMS add an additional bullet in this section that states that Part D plans are required to explicitly state in their disclaimer that enrollees have the ability to obtain a 90 day supply at a local, retail pharmacy.

### **Provider Requirements (page 123)**

In this section, CMS notes that "*All payments that plans make to providers for services must be fair market value, consistent with an arm's length transaction, for bona fide and necessary services, and otherwise comply with all relevant laws and regulations, including the Federal and any state anti-kickback statute.*" We request that CMS provide clarification or establish a frequently asked question (FAQ) to illustrate this requirement especially "fair market value" and "arm's length transaction".

### **Pharmacy Technical Help Center Operational Standards (page 160)**

It is essential that Part D pharmacy technical help centers provide pharmacists with timely information to avoid delays in coverage to Medicare beneficiaries at the point of sale. In January

2006, community pharmacies spent approximately six hours each day helping Medicare beneficiaries with their prescriptions. NCPA supports the addition of operational and customer service standards for pharmacy technical help centers. However, we urge CMS to evaluate these standards and strengthen them to respond to pharmacist and beneficiary complaints as they arise.

### **Conclusion**

NCPA would like to thank CMS for the opportunity to submit these comments on behalf of the nation's community pharmacists. We look forward to continuing to work with CMS to help ensure that the Medicare Part D program is successful in 2007 and beyond. For additional information or questions about these comments, please contact Stacey Swartz, Pharm.D., NCPA Director of Management & Educational Affairs at [Stacey.swartz@ncpanet.org](mailto:Stacey.swartz@ncpanet.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Roberts', with a long horizontal flourish extending to the right.

Bruce T. Roberts, R.Ph.  
Executive Vice President and CEO  
National Community Pharmacists Association