



## Pharmacy Services Agreement: Key Provisions

by Jeffrey S. Baird, Esq.

Once they sang about being “forever young,” but the Baby Boomers now need the services pharmacists have to offer. Those 78 million post-World War II babies, now aged 52 to 70, are retiring at the rate of 10,000 per day. Thanks to improvements in health care, they’ll have longer lives than previous generations. But, they’ll need to be cared for longer, too.

The term “long-term care” includes the following: skilled nursing facilities (SNFs) in which a patient receives rehabilitation care and then goes home; independent living facilities, in which residents live independently in their apartments but have access to a number of services; assisted living facilities, in which residents live in their own rooms/apartments and receive day-to-day services; and custodial care facilities, in which residents receive 24-hour care. Each one of these patients/residents has a need for the pharmacy’s products and services.

It is common for an LTC facility to enter into a pharmacy services agreement (PSA) with a pharmacy. Under the PSA, the pharmacy will provide a number of services to the facility. Because the facility is a referral source to the pharmacy, to avoid problems under the Medicare anti-kickback statute (AKS) and many state anti-kickback statutes, it is important for the facility to pay fair market value compensation to the pharmacy for its services.

With this backdrop in mind, a properly-drafted PSA should contain the following provisions:

### OBLIGATIONS OF THE FACILITY

- Ensure that the pharmacy has access to the residents’ medical records.
- Provide the pharmacy with any statement of deficiencies submitted by a government agency.

### SERVICES PROVIDED BY THE PHARMACY

The services provided by the pharmacy can include all or some of the following:

- Develop procedures for the provision of pharmacy products and services (collectively referred to as ‘services’).
- Coordinate services when they are provided by multiple pharmacies.
- Develop IV therapy procedures.
- Resolve medication-related problems by working with the facility’s interdisciplinary team.
- Establish procedures for conducting the monthly medication review (MRR) for each resident, addressing expected time frames for conducting MRR and reporting findings, addressing irregularities, and documenting and reporting results of the MRR.
- Establish procedures that address the conduct of MRRs for residents who are anticipated to stay less than 30 days, and residents who experience an acute change of condition that may be medication-related.
- Establish a system of records of receipts and disposition of controlled drugs to enable a reconciliation.
- Develop procedures to address the acquisition, receipt, dispensation, administration, disposition, labeling, and storage of medications and personnel authorized to access and/or administer medications.
- Participate in quarterly quality assurance committee meetings.
- Conduct inspections of nursing stations, their drug storage areas, and emergency medication kits.
- Develop policies that identify who is responsible for identifying and prescribing indications for use of medications, providing and administering medications, and monitoring residents for the effects and potential adverse consequences of the resident’s medication regimen.

- Assist the facility in assessing each resident to ascertain the causes of the condition requiring treatment, including determining if the resident's condition reflects an adverse medication consequence.
- Conduct an MRR for each resident at least once a month. In conducting MRRs, the pharmacy will identify irregularities such as syndromes potentially related to medication therapy, emerging or existing adverse medication consequences, and the potential for adverse drug reactions and medication errors.
- For residents anticipated to stay less than 30 days or with an acute change of condition, the pharmacy will provide, upon the facility's request, interim medication regimen review (iMRR) reports.
- Within 48 hours of conducting an MRR, the pharmacy will provide a summary report to the attending physician and the facility's director of nursing documenting that no irregularity was identified or reporting any irregularities.
- Work with the facility to ensure that medications are labeled in accordance with federal and state labeling requirements, and that the safe and secure storage of medications in locked compartments under proper temperature controls is in accordance with manufacturers' specifications.

## **COMPENSATION BY FACILITY TO THE PHARMACY**

The following is sample language for compensation to the pharmacy:

*"The Facility will pay a retainer of \$\_\_\_\_\_ ("Retainer") within 10 days of the effective date of the PSA. The Retainer will be applied to the balance of the first invoice issued to the Facility. In the event that the Retainer exceeds the amount of the first invoice, the remaining amount will be applied to subsequent invoices. The Facility will pay the pharmacy \$\_\_\_\_\_ per hour. The Facility will reimburse the pharmacy for reasonable pre-approved expenses incurred by the pharmacy." ■*

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