

CENTER FOR MEDICARE

DATE: June 24, 2015

TO: All Prescription Drug Plans, including Medicare Advantage Organizations
Offering Prescription Drug Plans

FROM: Amy K. Larrick
Acting Director, Medicare Drug Benefit and C & D Data Group

**SUBJECT: Marketing Disclaimer Language for Plans with Limited Access to Preferred
Cost Sharing Pharmacies**

On May 21, 2015, the Centers for Medicare & Medicaid Services (CMS) issued a memorandum seeking public comments on proposed marketing disclaimer language for plans with limited access to preferred cost sharing pharmacies. We thank all those who took the time to comment on the proposed language. As outlined in the Final CY 2016 Call Letter, all Part D sponsors with preferred cost sharing pharmacies must conduct their own network analysis to determine if access to preferred cost sharing pharmacies within their networks falls below the published access outlier thresholds. Using our authority under 42 C.F.R. §423.2264(d) to ensure marketing materials are not misleading, CMS will require sponsors to make disclosures on all 2016 plan marketing materials if they determine that their 2016 network falls below these thresholds. This disclaimer requirement does not apply to Part D plans that qualify for the convenient access waiver.

In response to comments, CMS revised the disclaimer language to provide greater transparency and clarity for beneficiaries. We also expanded the variable field for geographic area type to also include the applicable state(s) (e.g., urban New Jersey) to allow for greater specificity for marketing materials used for plan offerings available in multiple states or regions. While some commenters expressed concern that beneficiaries might be confused by the disclaimer, we believe that including this disclaimer on marketing materials will improve transparency and enable beneficiaries to select the best plan for their needs.

Commenters also requested that we clarify which plan marketing materials must include the disclaimer. The disclaimer will be required on all 2016 plan marketing materials that reference preferred cost sharing pharmacy networks and/or preferred cost sharing benefits. These materials include, but are not limited to, the Summary of Benefits, Annual Notice of Change, Evidence of Coverage, Pharmacy Directory, websites, and all print, television and radio advertisements that reference preferred cost sharing or preferred cost sharing pharmacy networks.

The disclaimer for all plans with limited access to preferred cost sharing pharmacies is as follows:

“<insert organization/plan name>’s pharmacy network offers limited access to pharmacies with preferred cost sharing in <insert geographic area type(s) and state(s) for which plan is an outlier>¹. The lower costs advertised in our plan materials for these pharmacies may not be available at the pharmacy you use. For up-to-date information about our network pharmacies, including pharmacies with preferred cost sharing, please call <insert Member Services phone number and TTY> or consult the online pharmacy directory at <insert website>.”

For any questions concerning the marketing disclaimer language please contact Lucia Patrone at Lucia.Patrone@cms.hhs.gov.

¹ Geographic area type is defined as rural, suburban, and urban.