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340B LOBBY SOLICITS CMS HELP ON PART D CONTRACTING

Safety-net providers may mount a new push to solicit CMS' help in their effort to improve contracting between Medicare Part D plans and so-called 340B pharmacies, which serve low-income patients. These facilities are particularly upset that some Part D sponsors, presumably because 340B pharmacies receive steep drug discounts, pay them less than they pay other pharmacies.

"We hear regularly about plans that have a different contract and reimbursement rate for 340B pharmacies, one that's much lower," says Bill von Oehsen, a Washington attorney who represents 340B interests in his role as president and general counsel of the Safety Net Hospitals for Pharmaceutical Access association. "We think the 340B program was created for the benefit of these facilities, not Part D plans."

In the first two years of Part D, many drug plans simply refused to contract with 340B pharmacies, according to stakeholders. While flat-out refusals have become less of a problem, von Oehsen says that the focus has now shifted toward what he calls "discriminatory" reimbursement.

Safety-net pharmacists are seeking some acknowledgment that the purpose of statutorily guaranteed drug prices, which must not exceed 340B ceiling prices tied to the Medicaid best price, was to stretch provider resources and that 340B pharmacies should not be expected to pass some of their savings on to insurers, von Oehsen says. The agency could do so via guidance or through its model Part D contract addendum, developed with the Health Resources and Services Administration (HRSA), which oversees the 340B program, he suggests.

CMS has repeatedly said it does not want to interfere with private-sector contract negotiations. The model contract is voluntary, and von Oehsen says that few Part D plans appear to use the 340B-specific addendum, although some may incorporate its language into the contracts they draft specifically for safety-net providers.

At HHS' low-income health access forum Feb. 27, von Oehsen asked whether CMS and HRSA would consider soliciting public comment on how to improve the addendum. A HRSA official replied that he would be "glad to take that recommendation back to the agency and see how we can get more input" after evaluating 340B experience during the first years of Part D.

Safety-net stakeholders hope HRSA will add language to its addendum that refers to the fact that some 340B facilities enjoy malpractice immunity under various state and local tort claims laws. This may persuade Part D sponsors not to impose unnecessarily tough insurance requirements on cash-starved 340B facilities, von Oehsen says. The addendum currently only mentions immunity that community health centers enjoy under the Federal Tort Claims Act.

Plus, CMS should clarify what types of payments count toward a Part D enrollee's true out-of-pocket (TrOOP) expenses, von Oehsen added. This issue is of special importance to 340B facilities because they often reduce or waive beneficiary co-payments using charitable donations or redirected disproportionate share hospital dollars which should count toward TrOOP.