

under a State plan under Title XIX. As States' expenditures related to the provision of this data do not fall within the activities covered under sections 1903(a)(1) through (6) of the Act, we believe the only paragraph under section 1903(a) of the Act that would capture these expenditures is section 1903(a)(7) of the Act. Section 1903(a)(7) of the Act provides for a federal share of 50 percent for State expenditures "found necessary by the Secretary for the proper and efficient administration of the State plan" that are not already covered under sections 1903(a)(1) through (6) of the Act. Because States are required to provide us the eligibility data under their State plan, we believe related State expenditures are necessary for the proper administration of the State plan. Section 403.815(d)(2) of our regulations therefore provides that expenditures made by a State in connection with providing us eligibility data will be treated as State expenditures for which Federal matching payments are available under section 1903(a)(7) of the Act. Accordingly, States will be reimbursed 50 percent of these expenditures.

*I. Special Rules Concerning Pharmacies Serving Long Term Care Residents or Operated by the Indian Health Service, Indian Tribes and Tribal Organizations, and Urban Indian Organizations*

Section 1860D–31(g)(5)(A) of the Act provides that the Secretary shall establish procedures and may waive requirements as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long term care facilities.

Further, section 1860D–31(g)(5)(B) provides that the Secretary shall establish procedures and may waive requirements to ensure that, for purposes of providing transitional assistance, Indian Health Service, Indian Tribe and Tribal Organization, and Urban Indian Organization (I/T/U) pharmacies have the opportunity to participate in the pharmacy networks of at least two endorsed discount card programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

In the United States, there are approximately 16,380 Medicare and Medicaid certified skilled nursing facilities and nursing facilities (source: On-Line Survey and Certification and Reporting (OSCAR) System, August, 2003). About 1.3 million Medicare beneficiaries are residents of extended-

stay skilled nursing facilities and nursing facilities (Source: 2001 Medicare Current Beneficiary Survey). Among the 1.3 million, the vast majority of these individuals (72 percent) are enrolled in both Medicare and Medicaid, and therefore will be ineligible for the Medicare endorsed discount card program if they have drug coverage through Medicaid. Of the remaining approximately 400,000 Medicare nursing home residents, some portion—perhaps as many as 200,000—may be eligible for transitional assistance under this program. Approximately 3,000 pharmacies support these facilities (source: American Society of Consultant Pharmacists, verbal communication, August 2003.).

Generally speaking, long term care pharmacies provide access to prescription drugs to residents of skilled nursing facilities and nursing facilities through medical benefits that are coordinated by the long term care facilities in cooperation with the long term care pharmacies. Further, the medications provided are often specially packaged to provide quality control. These, among other circumstances, contribute to such pharmacies not being well integrated into the private networks maintained by the pharmacy benefit management industry. The provisions of section 1860D–31(g)(5)(A) of the Act provide an opportunity for long term care pharmacies to provide prescriptions to residents of long term care facilities through the usual distribution channels established by these facilities, while offsetting the cost borne by such residents when their medical coverage either does not apply or has been exhausted.

We estimate that there are approximately 87,000 AI/ANs over the age of 65 who use the services of the Indian Health Service, and another 20,000 or so such individuals who are under the age of 65 years and eligible for Medicare by virtue of a disability (source: Indian Health Service). Of the total, about 36,000 are covered by Medicaid and we estimate that a total of about 18,000 may be eligible for transitional assistance. There are 201 I/T/U pharmacies in 27 States, with 152 operating in ambulatory settings and 49 operating in hospitals. Table 3 depicts the number of these pharmacies by State.

Generally speaking, I/T/U pharmacies provide access to prescription drugs off of the Federal Supply Schedule to AI/ANs, and these pharmacies are not well integrated into the private networks maintained by the pharmacy benefit

management industry. The provisions of section 1860D–31(g)(5)(B) of the Act provide an opportunity for I/T/U pharmacies to provide prescriptions to AI/ANs at the low Federal Supply Schedule rate, whereby coverage of the cost of such drugs would in Part Come from transitional assistance funds, and in part from Indian Health Service funds.

To meet the requirements of section 1860D–31(g)(5) of the Act, we are strongly encouraging endorsed sponsors to offer a plan in their application for endorsement to include long term care and/or I/T/U pharmacies in their networks for the purpose of administering transitional assistance. As will be provided in greater detail in the solicitation, CMS intends to employ a competitive process to select for "special endorsement," among interested applicants, in each of the 50 States and the District of Columbia, at least two applicants that, in accordance with § 403.816(b)(2) of our regulations, agree to contract with any willing long term care pharmacy provider in the endorsed sponsors' service areas seeking to participate in their pharmacy networks. Similarly, CMS intends to select at least two applicants for "special endorsement" in each of the 50 States and the District of Columbia where I/T/U pharmacies operate, in accordance with § 403.816(d)(2) of our regulations, to contract with any I/T/U pharmacy in the endorsed sponsors' service areas seeking to participate in their networks.

Selection criteria will be further discussed in the solicitation and will include understanding and accommodation of, as well as prior experience with, the unique circumstances of these special pharmacies, the percent of all long term care and/or I/T/U pharmacies within the proposed service areas to be provided contracts, the expansiveness of the proposed service area, completeness and feasibility of the plan for favorable access, and timeliness of implementation. The selected applicants, also called special endorsed sponsors, will provide for terms in these special pharmacy contracts to accommodate certain unique attributes of these pharmacies, described below, which are intended to improve access to needed prescription drugs and transitional assistance by long term care residents and AI/ANs. Also, as described below, we will work closely with interested applicants and special endorsed sponsors to provide technical assistance and other incentives.

As described above, the Secretary must ensure that transitional assistance-