

eligible residents of long term care facilities have access to transitional assistance. Additionally, the Secretary must ensure that I/T/U pharmacies utilized by AI/ANs have the opportunity to participate in the pharmacy networks of at least two discount cards for the purpose of providing transitional assistance. We believe the best way to ensure that AI/ANs and residents of long term care facilities have the opportunity to receive transitional assistance is to promote a competition for "special endorsement" to serve these beneficiaries. We believe a competition among interested sponsors will encourage better, more thoughtful plans for access to a market generally untapped by the pharmacy benefit management industry.

As discussed previously, pharmacies supporting long term care facilities and AI/ANs are not generally included in the traditional pharmacy networks of the pharmacy benefit management industry, thus representing potentially new lines of business for some applicants, or possibly leveraging an existing niche market for some pharmacy benefit management organizations. The competition will guarantee to the special endorsed sponsors additional covered lives, an opportune business strategy to grow enrolled lives and subsequent utilization, leading to additional revenues. A "guaranteed" volume of new covered lives would be needed to cover the fixed costs associated with starting up the special provisions of these special pharmacy contracts. We believe that the promise of a guaranteed volume for the winning applicant will be a critical factor in whether the applicant decides to submit a plan that covers long term care and/or I/T/U pharmacies. Without the competition, we think that there is a high risk of drug discount card program applicants not offering a plan. Literally speaking, we believe the competition is necessary to assure these populations will have access to any endorsed card program. Further, the competition will provide to the special endorsed sponsors a "special endorsement" they can market.

An added benefit of the competition to beneficiaries is that the negotiations between these pharmacies and special endorsed sponsors to accommodate these pharmacies' special circumstances, along with technical assistance provided by CMS, can be accomplished relatively quickly compared to the process necessary if all endorsed sponsors had to accommodate these special circumstances. This will lead to a timely implementation of these special provisions, improving access to

prescription drugs. In the case of long term care pharmacies, if interested pharmacy benefit management organizations with niche expertise in this area are able to meet our requirements and compete successfully for the special endorsement, then participation may also improve the timeliness of implementation and access to transitional assistance for long term care residents.

The applicants selected for special endorsement will receive assistance and support from CMS in setting up special contracting arrangements with these pharmacies as needed. We intend to hold a special break out session at the pre-application conference and, to the extent that this would be useful to interested applicants and, if feasible, CMS would arrange for the participation of the long term care pharmacy industry and the Indian Health Service, to the extent possible, provide a list of all pharmacies that support long term care facilities and I/T/U pharmacies; provide for an expedited marketing review to the extent possible; and provide special recognition for these special endorsed sponsors on the CMS Web site that describes their programs.

Additionally, as discussed in section II.C.1. of this document, endorsed sponsors must provide us with sample copies of their contracts with pharmacies participating in their network prior to commencing outreach and enrollment activities. Because the arrangements between special endorsed sponsors and long-term care and I/T/U pharmacies will present unique challenges and represent new types of arrangements for most special endorsed sponsors, special endorsed sponsors must only make a good faith effort to finalize these arrangements as soon as practicable; we will not require that these arrangements be finalized and approved by us prior to the start of the special endorsed sponsor's commencement of outreach and enrollment activities under its general endorsement, if applicable.

One of the goals of the technical assistance will be to help special endorsed sponsors understand the operations of these pharmacies which may require that special contracting provisions be included in the contracts between the special endorsed sponsors and these pharmacies. Both types of pharmacies have a number of unique characteristics that distinguish them from other retail pharmacies that will be participating in the drug discount card program. For instance, I/T/U pharmacies purchase drugs off the Federal supply schedule; generally can only serve AI/ANs; are required by law

to waive copayments; and generally stock a more limited range of drugs compared to other retail pharmacies. Further, a few may not have point of sale technology.

Long term care pharmacies generally provide the drugs directly to the skilled nursing facilities and nursing facilities where the patient resides, not directly to the patient, under a medical benefit. They also engage in a significant coordination of benefits effort that would require at least some claims processed against the transitional assistance to be processed off-line, not in real time.

Thus, as cited in § 403.816 of our regulations, we may require of special endorsed sponsors certain contracting provisions. First, we will require that these sponsors contract with any willing provider of these types in their service areas (§ 403.816(b)(2) and § 403.816(d)(2) of our regulations). Other likely special provisions in the contracts between special endorsed sponsors and these pharmacies include (§ 403.816(b)(4) and § 403.816(d)(3) of our regulations):

- For long term care: Long term care pharmacies are permitted to provide covered discount card drugs only to transitional assistance enrollees of the special endorsed sponsor's endorsed program who reside in long term care facilities served by the pharmacy; special endorsed sponsor may need to process special transaction type depending on whether the pharmacy is recognized under HIPAA as a retail pharmacy (that is, X12 versus NCPDP); and the special endorsed sponsor must agree to process "late" claims without penalty as payer of last resort after other insurance has been processed first.

- For I/T/U pharmacies: the pharmacy generally can only serve AI/ANs (special endorsed sponsor must structure network and educate enrollees so that non-AI/ANs understand these pharmacies generally are not available to them); and pharmacy is not required to stock all drugs.

An additional requirement, as provided in § 403.816(b)(3) of the regulation, special endorsed sponsors for long term care residents will be required to process claims from any out-of-network long term care pharmacies that supply covered discount card drugs to long term care facility residents enrolled in the drug discount card program when such beneficiaries have a transitional assistance balance remaining. As residents in skilled nursing facilities and nursing facilities are generally required by these entities to use the facility's selected long term care pharmacy, this provision will