



JUN - 4 2008

Washington, D.C. 20201

**TO:** Kerry Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services

**FROM:** Daniel R. Levinson *Daniel R. Levinson*  
Inspector General

**SUBJECT:** Memorandum Report: "Role of Nursing Homes and Long Term Care Pharmacies in Assisting Dual-Eligible Residents With Selecting Part D Plans," OEI-02-06-00191

This memorandum report provides information about the role of nursing homes and long term care pharmacies in assisting dual-eligible residents with selecting their Part D plans. This information was gathered as part of another study, entitled "Availability of Medicare Part D Drugs to Dual-Eligible Nursing Home Residents" (OEI-02-06-00190).

Nursing homes and long term care pharmacies reported providing different types of assistance to dual-eligible residents who were selecting their Part D plans. The types of assistance included: identifying multiple plans that met residents' needs, enrolling residents in a single plan or recommending one plan to residents and providing general information. Some nursing homes and long term care pharmacies provided no assistance at all. It appears that some of these practices may not be in accordance with the Centers for Medicare & Medicaid Services (CMS) guidance that does not allow nursing homes to request, require, coach, or steer residents to select plans. We further note that the Federal regulations that apply to hospital discharge planning may serve as a useful model for Part D. For example, as part of the discharge-planning process, hospitals must provide a list of home health agencies or skilled nursing facilities available to patients.

## BACKGROUND

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Program, known as Medicare Part D.<sup>1</sup>

---

<sup>1</sup> The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. No. 108-173, Title I, § 101 et seq. (codified at 42 U.S.C. § 1395w-101 et seq. and 42 U.S.C. § 1396u-5).

CMS contracts with private health insurance companies to provide the Medicare Part D benefit. These private health insurance companies offer a variety of Part D plans.

Prior to Medicare Part D, Medicaid paid for most prescription drugs for dual-eligible residents, who are eligible to receive both Medicare and Medicaid. Under Part D, they now receive drug coverage through Medicare and must enroll in private Part D prescription drug plans. On January 1, 2006, dual-eligible nursing home residents were automatically enrolled in randomly assigned eligible Part D plans if they had not already selected one.<sup>2</sup> Unlike other Medicare beneficiaries, dual-eligible beneficiaries may change their plans at any time.<sup>3</sup>

Pursuant to Federal law, all Medicare beneficiaries have the right to enroll in Part D plans.<sup>4</sup> Additionally, one of the Conditions of Participation in the Medicare and Medicaid programs is that nursing homes must not deny beneficiaries the right to enroll in Part D plans.<sup>5</sup> However, a nursing home is allowed to select a Part D plan for a resident if it is acting as the resident’s legal representative in accordance with State law.<sup>6</sup>

State surveyors can cite a nursing home with a deficiency if it fails to allow beneficiaries the right to choose their Part D plans.<sup>7</sup> In a memorandum to State Survey Agency Directors, CMS provided additional guidance about this requirement:

Under no circumstance should a nursing home require, request, coach, or steer any resident to select or change a plan for any reason. Furthermore, nursing homes should not knowingly and/or willingly allow the pharmacy serving the nursing home to require, request, coach, or steer a resident to select or change a plan [42 CFR §483.12(d)]. Nursing homes may, and are encouraged to, provide information and education to residents on all available Part D plans.<sup>8</sup>

---

<sup>2</sup> 42 U.S.C. § 1395w-101(b)(1)(C); see also 42 CFR § 423.34.

<sup>3</sup> 42 CFR § 423.38(c)(4).

<sup>4</sup> 42 U.S.C. § 1395w-101(b)(1)(B)(ii).

<sup>5</sup> 42 CFR § 483.12(d).

<sup>6</sup> 42 CFR § 423.32(b)(i); see also “Medicare Program; Medicare Prescription Drug Benefit; Final Rule,” 70 Fed. Reg. 4194, 4203–4204 (Jan. 28, 2005).

<sup>7</sup> 42 CFR § 483.12(d) (1) states that “The facility must--(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid.” See also Centers for Medicare & Medicaid Services (CMS), Center for Medicaid and State Operations/Survey and Certification Group, “Nursing Homes and Medicare Part D,” Ref: S&C-06-16 (May 11, 2006).

<sup>8</sup> CMS, Center for Medicaid and State Operations/Survey and Certification Group, “Nursing Homes and Medicare Part D,” Ref: S&C-06-16 (May 11, 2006).

In addition, CMS marketing guidelines require Part D plans to ensure that providers and subcontractors, including pharmacies and long term care facilities, comply with certain requirements.<sup>9</sup> Specifically, the guidelines encourage providers to assist beneficiaries in objective assessments of their needs and plan options that may meet those needs. However, the guidelines state that “Providers also cannot direct, urge or attempt to persuade beneficiaries to enroll in a specific plan.”

## **METHODOLOGY**

The information provided in this memorandum report is based on an analysis of structured interviews with a random sample of nursing home administrators and directors of operations for long term care pharmacies (referred to hereafter as pharmacy directors). These respondents have firsthand knowledge of Part D requirements for dual-eligible nursing home residents.

We selected a simple random sample of 150 nursing homes from CMS’s Online Survey and Certification Reporting System. We excluded six of these nursing homes because they informed us that they did not have any dual-eligible residents in 2006. Our sample included the remaining 144 nursing homes. We asked each of these nursing homes to identify all of the long term care pharmacies that provided Part D drugs to their residents. They identified 139 long term care pharmacies. We excluded 55 of these 139 pharmacies from our review because they were under investigation by the Office of Inspector General.

We interviewed 128 administrators and 79 pharmacy directors between September 2006 and March 2007. We asked all administrators and pharmacy directors about their roles in assisting dual-eligible residents with selecting their Part D plans. Estimates derived from the administrators’ responses are projected to the population of administrators of nursing homes with dual-eligible residents. However, estimates derived from pharmacy directors’ responses are limited to the sample respondents because of the small usable sample size. We also cannot make judgments as to whether the nursing homes’ activities are allowable based on State law. As previously mentioned, a nursing home may select a Part D plan for a resident if it is acting as the resident’s legal representative in accordance with State law. The appendix provides the confidence intervals for selected estimates.

Our review was conducted in accordance with the “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency.

---

<sup>9</sup> CMS, “Medicare Marketing Guidelines for: Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans, and 1876 Cost Plans,” August 2005, pp. 122–124.

## RESULTS

### **Many Nursing Homes and Long Term Care Pharmacies Identified Multiple Plans for Dual-Eligible Residents**

During our interviews, 38 percent of nursing home administrators reported that their nursing homes or long term care pharmacies identified multiple plans that met the needs of dual-eligible residents. (See Table 1 on page 5.) Administrators most commonly noted that nursing home or long term care pharmacy staff entered the residents' prescribed drugs into the Medicare Plan Finder,<sup>10</sup> assessed the results, and provided a list of several plans or the entire list of plans to residents. Another administrator explained that he worked with the pharmacy to identify three or four plans that best fit each resident's needs.

Similarly, 26 of the 79 pharmacy directors whom we interviewed reported that their pharmacies identified multiple plans that met dual-eligible residents' needs or provided a general list of plans that the pharmacies recommended to all residents. Most commonly, these pharmacy directors reported also using the Medicare Plan Finder to identify appropriate plans for residents. In addition, one pharmacy director explained that his pharmacy provided a list of recommended plans based on the extent to which they covered the most commonly prescribed drugs for the elderly. Further, prior to the start of our study, we obtained a list of plans that one long term care pharmacy had distributed to nursing homes. It provided estimates of the potential expense to the nursing home for dual-eligible residents enrolled in these plans.<sup>11</sup>

### **Several Nursing Homes and Long Term Care Pharmacies Recommended One Plan to Dual-Eligible Nursing Home Residents**

About 9 percent of nursing home administrators reported that their nursing homes or long term care pharmacies enrolled most dual-eligible residents in a single plan or recommended one plan to each resident. One administrator reported that her nursing home obtained residents' permission to change their plans and then enrolled most of them in a single plan. Another administrator noted that her nursing home recommended one plan to all its residents and enrolled most long term care residents in that plan. Another

---

<sup>10</sup> The Medicare Prescription Drug Plan Finder is an Internet site where Medicare beneficiaries can learn about Medicare prescription drug coverage, find and compare prescription drug plans, and enroll in a prescription drug plan. The Plan Finder can be found at <http://www.medicare.gov/MPDPF/Public/Include/DataSection/Questions/MPDPFIntro.asp>.

<sup>11</sup> The analysis compared potential expenses for noncovered drugs, prior authorizations, and step therapy for dual-eligible residents for 20 Part D plans. Prior authorization requires a beneficiary to seek prior approval from the plan to receive a drug on the formulary. Step therapy requires the beneficiary to try a less expensive drug before the plan will cover a specific drug.

administrator reported that she recommended the same plan to all residents based on the pharmacy’s advice.

The other eight administrators reported that their nursing homes or long term care pharmacies recommended one plan to each resident or to some residents based on their individual drug needs. Several of these administrators explained that staff at the nursing homes or at the long term care pharmacies reviewed each resident’s drugs and then recommended one plan, as opposed to providing the resident with a list of several plans that met his or her needs.

In addition, 6 of the 79 pharmacy directors whom we interviewed also reported that their pharmacies generally recommended one plan to each resident. Five pharmacy directors reported that their pharmacies recommended one plan to each resident or to some residents based on their individual drug needs. Another pharmacy director reported that his pharmacy recommended the same plan to all residents because its formulary was similar to the formulary that physicians used prior to Part D.

**Table 1: Nursing Home Administrators’ and Pharmacy Directors’ Responses About Assisting Dual-Eligible Residents With Selecting Their Part D Plans**

Type of Assistance	Nursing Home Administrators		Pharmacy Directors
	Number	Percentage	Number
Identified multiple plans that met the needs of dual-eligible residents or provided a general list of plans that the pharmacy recommended to all residents*	48	38%	26
Enrolled most dual-eligible residents in a single plan or recommended one plan to each resident	11	9%	6
Provided general information only	47	37%	17
Provided no assistance	22	17%	30
<b>Total</b>	<b>128</b>	<b>100%**</b>	<b>79</b>

\*Note: Only pharmacy directors responded that they provided a general list of recommended plans.

\*\* The total of these percentages does not equal 100 because of rounding.

Source: Office of Inspector General analysis of interview data, 2007.

**The Remaining Nursing Homes and Long Term Care Pharmacies Provided Only General Information or No Assistance At All to Dual-Eligible Residents**

Another 37 percent of nursing home administrators and 17 of the 79 pharmacy directors whom we interviewed reported that they provided only general information about the benefit to dual-eligible residents. According to these respondents, they most commonly provided educational materials or answered questions about the Part D benefit and the enrollment process.

In addition, 17 percent of administrators and 30 of the 79 pharmacy directors whom we interviewed said that they provided no assistance directly to dual-eligible residents with selecting their Part D plans. Several administrators and pharmacy directors noted that they had no role in the selection process because the residents were automatically enrolled in plans by CMS.

**CONCLUSION**

Based on our interviews, we found that nursing homes and long term care pharmacies provided different types of assistance to dual-eligible residents who were selecting their Part D plans. It appears that some of these practices, such as enrolling beneficiaries into a single plan or recommending only one plan, may not be in accordance with CMS guidance. This guidance does not allow nursing homes to request, require, coach, or steer residents to select plans. We further note that the current Federal regulations that apply to hospital discharge planning may serve as a useful model for Part D. Specifically, as part of the discharge-planning process, the hospital must: provide a list of home health agencies or skilled nursing facilities available to the patient,<sup>12</sup> document in the patient's medical record that the list was presented, and inform the patient or the patient's family of their freedom to choose among participating Medicare providers of posthospital care services.<sup>13</sup>

This report is being issued directly in final form because it contains no recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-02-06-00191 in all correspondence.

---

<sup>12</sup> 42 CFR § 482.43(c)(6)(iii) states that “[T]his list must only be presented to patients for whom home health care or post-hospital extended care services are indicated as appropriate as determined by the discharge planning evaluation.”

<sup>13</sup> 42 CFR § 482.43(c).

Appendix  
 Confidence Intervals for Selected Estimates for Nursing Home Administrators  
 (Sample Size = 128)

Estimate Description	Point Estimate	95-Percent Confidence Interval
Percentage of nursing home administrators who reported that their nursing homes or the long term care pharmacies identified multiple plans that met the needs of dual-eligible residents	37.5%	29.1%–45.9%
Percentage of nursing home administrators who reported that their nursing homes or the long term care pharmacies enrolled dual-eligible residents into a single plan or recommended one plan to each resident	8.6%	3.7%–13.5%
Percentage of nursing home administrators who reported that they provided only general information about the benefit to dual-eligible residents	36.7%	28.4%–45.0%
Percentage of nursing home administrators who reported that they provided no assistance at all to dual-eligible residents with selecting a Part D plan	17.2%	10.7%–23.7%

Source: Office of Inspector General analysis of interview data, 2007.