



Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4182-P

Dear Administrator Verma,

On behalf of SMP Pharmacy Solutions, I write in response to the proposed rule "Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program" as published by the Centers for Medicare & Medicaid Services (CMS) in the November 28, 2017 Federal Register. Specifically we want to comment on Any Willing Pharmacy (AWP) requirements.

Pharmacy Benefit Managers (PBM) have taken advantage of the mail order definition by defining a "Mail Order Pharmacy" as any pharmacy that mails or ships just one or more prescriptions. Recently, SMP was removed from one of the networks of a big provider because we mailed some prescriptions to members that were out of state, even though we are licensed in the states that we sent the prescriptions to and followed all state laws and regulations. We received a letter asking us to stop mailing prescriptions, which we proceeded to do but one prescription was mailed out mistakenly after we signed an attestation that we would no longer mail anything. This health plan proceeded to send us a letter removing us out of network for **5 years** due to this one prescription. They used the following reasoning for their decision:

- Pharmacy continued to mail prescriptions
- Pharmacy is not eligible to join network for 5 years because we failed to cite any authority to support its position
- PBM policy to preclude pharmacy terminated with cause from participating for 5 years is designed to prevent Fraud, Waste, and Abuse

We appealed their decision but they upheld they're original decision and we are no longer in their network. They used the mail order pharmacy definition that they have in their provider manual to use it against us and against other pharmacies so that they can unfairly terminate pharmacies from their network so that they can send prescriptions to their own PBM pharmacy and unfairly eliminate competition. The mailed prescriptions were just a minor percentage of our total business with this PBM. In addition, they cited FWA, which is inaccurate and unfair on their part.



In addition to CMS proposed definition, I propose that CMS further clarify their proposed definition of mail order to include that 95% or more of the prescriptions are mailed or shipped. This way it will be very clear for the PBMs, as the current definition that's proposed by CMS leaves it open to interpretation by the PBM as to what constitutes a "mail order" pharmacy. I would also make sure that CMS clarifies that if the pharmacy meets the definition of a "retail pharmacy" then they can't be considered a "mail order pharmacy". I would also recommend a National/Federal Standard with inclusion criteria and if the pharmacy meets it then they are considered a retail pharmacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Eddy Lopez".

Eddy Lopez, Pharm.D.
Director of Operations
SMP Pharmacy Solutions