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**DATE:** April 3, 2020

**TO:** All Part D Plan Sponsors

**SUBJECT:** Notification of PDE Prescriber ID Editing and States of Emergencies

The purpose of this memo is to notify Part D sponsors that due to the ongoing public health emergency, CMS will exercise its enforcement discretion to allow pharmacists to authorize emergency refills when prescribers are not available to provide refill renewal prescriptions, when consistent with State emergency declarations. CMS systems were designed to account for such situations. Specifically, sponsors are able to submit prescription drug event (PDE) data that indicates the pharmacy is the prescriber during a declared state of emergency, when consistent with State law, and following the procedures and requirements described below.

Pursuant to 42 C.F.R. 423.120(c)(6)(iii), Part D plan sponsors may not submit PDE records to CMS unless they include on the PDE records the active and valid individual National Provider Identifiers (NPIs) of the prescribers of the drugs. In 2013, in order to assist the Federal government in fighting possible fraudulent activity in the Part D program, CMS announced that as of May 6, 2013, sponsors would be required to report a Type 1 (individual) NPI in the Prescriber ID field on the PDE.

CMS was later made aware of State laws that allow for prescribing flexibilities when a state of emergency is declared, and recognized that “the prescriber of the drug” may not have a Type 1 NPI. For example, if a State allows a pharmacist to prescribe during a declared state of emergency, and that pharmacist does not have a Type 1 NPI, the pharmacist may provide the pharmacy’s Type 2 (organization) NPI on the claim.

Consequently, when there is a declared state of emergency, CMS allows a Type 2 NPI in the Prescriber ID field on the PDE if it is the same NPI in the Service Provider ID field. This emergency exception must only be used when, under State law, the prescription from a pharmacist would be a valid prescription.

Due to the public health emergency posed by COVID-19 and the urgent need to ensure that PDE data for valid prescriptions are accepted, CMS is exercising its enforcement discretion to adopt a temporary policy of relaxed enforcement in connection with the requirement at 42 C.F.R. 423.120(c)(6)(iii) for a sponsor to submit PDE data with an “individual NPI of the prescriber of the drug.” We therefore believe that this guidance is a statement of agency policy not subject to

the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. § 553(b)(A). For the same reasons explained above, the CMS additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice and comment for this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. § 553(b)(B) & (d)(3). Similarly, even if this guidance were subject to the public participation provisions of 42 USC § 1395hh(b)(1), CMS finds that these public participation provisions also do not apply to this guidance because, for the reasons explained above, 5 U.S.C. § 553(b) does not apply to this guidance pursuant to 5 U.S.C. § 553(b)(B). 42 USC § 1395hh(b)(2)(C).