



January 9, 2003

The Honorable Linda L. Ruthardt
Commissioner
Division of Health Care Finance and Policy
Two Boylston Street, 5th Floor
Boston, Massachusetts 02116-4704

**RE: Supplemental Public Comments – Proposed 114.5 CMR 13.00
Pharmacy Assessment**

Dear Commissioner Ruthardt:

On behalf of the Long Term Care Pharmacy Alliance (LTCPA), I hereby submit these supplemental comments to our original submission of December 30, 2002, relative to the division's proposed regulations governing the collection of pharmacy assessments.

Notwithstanding the fact that long-term care pharmacies are licensed in Massachusetts as retail pharmacies, we hope the division has come to understand that long-term care pharmacies are different in kind, not in degree, from retail drug stores or hospital outpatient pharmacies. Both in their business practices and in the delivery and intensity of the services they provide, long-term care pharmacies are in every important way the virtual equivalent of nursing home inpatient pharmacies.

Consequently, the proposed regulations give rise to unique and difficult issues for long-term care pharmacies relative to the collection of the pharmacy assessment. These include the following situations, for which we need answers to our questions or verifications of our assumptions:

- (1) Long-term care facilities in Massachusetts frequently admit residents on a short-stay basis with a managed care benefit to avoid more costly hospitalization. Some managed care payers are funded through the Medicare program (e.g., Eldercare, PACE) which include a payment for prescriptions.

It is our belief that since the payment for these prescriptions is funded by the Medicare program, they are not subject to the assessment.

- (2) Just as hospitals do, most nursing facilities in Massachusetts provide to care to residents under their Medicare Part A benefit. During the Medicare Part A nursing home stay, the nursing facility is responsible for medication costs. We also believe these prescriptions, provided as part of a Part A benefit and billed to the nursing facility, are not subject to the pharmacy assessment.
- (3) Long-term care pharmacies frequently encounter situations where a resident (or a family member on their behalf) has applied for Medicaid benefits and is awaiting a determination of eligibility. During the review period, the resident's prescriptions are held as a pending Medicaid claim until Medicaid issues a letter of eligibility retroactive back to a certain date. At that time, we believe that any prescriptions which are not provided as a Medicaid benefit would be subject to the assessment.
- (4) Periodically, Medicaid benefits are suspended while the agency reviews a nursing home resident's status. We would like to know whether prescriptions dispensed to a resident during this time are subject to the pharmacy assessment.
- (5) Any prescription dispensed to a Medicaid or Medicare-certified facility that is subject to on-line rejection (over-the counter medication, prior approval required, etc.) is billed by long-term care pharmacy to that facility (except for those facilities that elect to bill private pay residents for pharmacy related charges). We would like to know whether such prescriptions are subject to the pharmacy assessment

The Long Term Care Pharmacy Alliance respectfully urges the Division of Health Care Policy and Finance to verify our assumptions and address our other concerns in its final regulations, so that its member companies doing business in Massachusetts can efficiently and fully comply with General Law Chapter 118G, Section 26.

Very sincerely yours,



Stephen J. Northrup
Executive Director