

## **ATTACHMENT 2**

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-1200

HEALTH AFFAIRS

**FEB 11 2004**

Hubert J. Bell, Jr.  
Chair, Section of Public Contract Law  
American Bar Association  
Smith, Currie & Hancock, LLP  
Suite 2600 Peachtree Street, NE  
Atlanta, GA 30303-1530

Dear Mr. Bell:

Thank you for your letter of January 28 on behalf of the Section of Public Contract Law of the American Bar Association, including its Health Care Contracting Committee. Your letter raised concerns regarding the authority of the Department of Defense (DoD) to access federal pricing under the Veterans Health Care Act of 1992 (Act) for the TRICARE Retail Pharmacy Program.

As you are aware, Section 603 of the Act limits prices of pharmaceuticals obtained by certain federal agencies, including DoD. Being responsible for administering the Act, and after a thorough review of the matter, the Secretary of the Department of Veterans Affairs (VA) determined that the new TRICARE Retail Pharmacy Program qualifies for access to Federal ceiling prices for pharmaceuticals. The VA also supports the DoD position that federal supply schedule prices (when lower than Federal ceiling prices) may be accessed under the TRICARE Retail Pharmacy Program.

Under the new Retail Pharmacy Program, drugs are purchased under a centralized commodity management system with DoD having direct control over invoice and payment in order to ensure that federal pricing is applied only to drugs dispensed to an eligible TRICARE beneficiary and that the lower federal pricing accrues only to DoD accounts. This assures -just like in the military pharmacy and mail order pharmacy components of the TRICARE Pharmacy

Benefit Program, to which federal pricing already applies - that the retail pharmacy component of the Program is just another aspect of DoD procuring pharmaceuticals for DoD beneficiaries. We will work with both the VA and General Services Agency to facilitate such access.

It is the intent and desire of DoD to work with the pharmaceutical industry to resolve process issues necessary for smooth implementation of access to federal pricing by the TRICARE Retail Pharmacy Program. The VA arranged a meeting with certain

interested groups on January 29, 2004, and we are sure additional meetings and follow up discussions will occur. I am hopeful that all parties will join in carrying out the clear policy of this Act and numerous other laws that VA and DoD provide to the brave past, current, and future members of the armed forces and their families the finest health care at reasonable government costs.

Sincerely,

William Winkenwerder, **Jr., MD**