May 4, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: CMS rulemaking on retroactive pharmacy DIR fees at point of sale

Dear Administrator Verma:

On behalf of the National Community Pharmacists Association (NCPA), I encourage your agency to press forward, through the appropriate rulemaking procedures, with CMS' proposal in its request for information to place retroactive pharmacy direct and indirect remuneration (DIR) fees at point of sale. NCPA represents America's community pharmacists, including the owners of more than 22,000 independent community pharmacies. Together they represent an $80 billion health care marketplace and employ more than 250,000 individuals on a full or part-time basis. Independent community pharmacies are also typically located in traditionally underserved rural and urban communities, providing critical access to residents of these communities.

CMS' proposed rule released on November 16, 2017, outlined a proposal to place retroactive pharmacy DIR fees at point of sale.[1] During the public comment period on the proposed rule, countless pharmacists, patients, and stakeholders submitted comments detailing how the proposal would be a step in the right direction to address skyrocketing drug prices. Additionally, the proposal received overwhelming bicameral, bipartisan support from 80 members of the U.S. House of Representatives and 21 U.S. Senators urging CMS to move forward with its proposal in the request for information. On April 2, 2018, CMS asserted in its final Part D rule that CMS interprets the Part D statute provides CMS "with discretion to require that Part D sponsors apply at least a portion of the manufacturer rebates and all pharmacy price concessions they receive to the price of a Part D drug at the point of sale."[2] As CMS did not at that time issue an additional proposed rule from its findings in its request for information, I now implore you to act with expediency to propose a rule to place retroactive pharmacy DIR fees at point of sale.

[1] 82 Fed. Reg. 56 (published Nov. 28, 2017).
[2] 83 Fed. Reg. 16440 (published Apr. 16, 2018).

100 Daingerfield Road
Alexandria, VA 22314-2888
(703) 683-8200 PHONE
(703) 683-3619 FAX

DIR fees imposed on pharmacies participating in Medicare Part D networks by plan sponsors and their pharmacy benefit managers (PBMs) have exploded in recent years.[3] The treatment of these pharmacy price concessions as DIR rather than as reductions in the "negotiated price" of a drug has had a crippling impact on patients, the government, and community pharmacies. The retroactive nature of these fees means beneficiaries face higher cost-sharing for drugs and are accelerated into the coverage gap or "donut hole" phase of their benefit. What's more, beneficiaries reach the catastrophic phase of the benefit, for which CMS incurs approximately eighty percent of the cost. Costs to the government have surged as liability for Part D costs is increasingly being shifted from Part D plan sponsors to CMS. Finally, all retroactive pharmacy DIR fees are taken back from community pharmacies months later rather than deducted from claims on a real-time basis. This reimbursement uncertainty makes it extremely difficult for community pharmacists to operate their small businesses.

CMS' request for information on placing retroactive pharmacy DIR fees at point of sale in its proposed rule was a step in the right direction to battle the costs of prescription drugs but was not enough. CMS should now carefully review all input received from stakeholders and expeditiously finalize, through rulemaking procedures, a rule to place all retroactive pharmacy DIR fees at point of sale. A rule of this stature would demonstrate this Administration's dedication to meaningfully address rising prescription drug costs for beneficiaries. Thank you.

Sincerely,

B. Douglas Hoey RPh, MBA
CEO, National Community Pharmacists Association

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[3] The HHS Office of Inspector General has noted that these catastrophic costs that are driven by retroactive pharmacy DIR fees have tripled in recent years – from $10 billion in 2010 to $33 billion in 2015.