

June 7, 2021

The Honorable Chiquita Brooks-LaSure, MPP
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

On behalf of the National Community Pharmacists Association (NCPA), we congratulate you on your confirmation as the Administrator of the Centers for Medicare & Medicaid Services (CMS) and share your commitment to “improve quality, lower costs, and expand access.”¹

NCPA represents America’s community pharmacists, including the owners of more than 21,000 independent pharmacies—nearly half of which provide long-term care (LTC) services—who have a critical role in ensuring patients have immediate access to medications in both community and LTC settings.² Together, our members represent a \$74 billion healthcare marketplace, provide employment to approximately 250,000 individuals, and provide an expanding set of vital healthcare services to millions of patients every day.

It was a pleasure talking with you and the other members of the HHS Transition team when we met in December. During that meeting we shared that NCPA members are essential small businesses and are the nation’s most accessible healthcare providers, especially in America’s rural and urban underserved communities. The vital role of independent community pharmacies has been highlighted by the ongoing COVID-19 pandemic, where our members have been the linchpin of our nation’s public health response, contributing to efforts ranging from testing to immunization and administration and monitoring of monoclonal antibody treatments to reduce the spread of the virus.

Our members’ efforts have been particularly important in providing access to the most vulnerable and hard-to-reach members of their communities. 56.8 percent of independent pharmacies serve communities that rank “high” or “very high” on the Centers for Disease Control and Prevention (CDC) Social Vulnerability Index, which measures factors such as poverty, lack of

¹ Brooks-LaSure, C. (2021). Testimony of Chiquita Brooks-LaSure before the U.S. Senate Committee on Finance. Retrieved from https://www.finance.senate.gov/imo/media/doc/Chiquita%20Brooks%20LaSure%20Opening%20Statement_WRITTEN%20FINAL.pdf

² National Community Pharmacists Association. (2020). *2020 NCPA Digest*. Retrieved from <https://ncpa.org/sites/default/files/2020-10/2020-Digest.pdf>

transportation, and crowded housing to identify communities that need extra support during public crises.³

As you highlighted in your testimony before the Committee on Finance, “communities of color too often experience worse health outcomes, which we’ve seen so acutely during this pandemic... [experiencing] higher rates of COVID-19 infections and deaths compared to much of the surrounding communities.”⁴ Our members provide access to quality care in all communities, but are uniquely positioned to improve access in underserved rural and urban communities.

NCPA shares your commitment to improving public health, from COVID-19 to the opioid crisis. To assist in your work as you assume leadership of CMS, the following are our most pressing public health priorities, and our recommendations for addressing them:

- **CMS Must Address Retroactive Direct and Indirect Remuneration (DIR) Fees:** Retroactive pharmacy DIR fees are recouped from pharmacies weeks or even months after a medication has been dispensed and the patient has left the pharmacy, often forcing pharmacies to dispense medications below acquisition cost. The fees, which result in higher out-of-pocket cost-sharing for beneficiaries, have harmed small business independent community pharmacies as PBMs extract billions of dollars in pharmacy DIR fees. CMS recently recognized that DIR fees and price concessions result in higher out of pocket spending on drugs in Medicare Part D, stating that the “data show that pharmacy price concessions, net of all pharmacy incentive payments, grew more than 91,500 percent between 2010 and 2019.”⁵ NCPA greatly appreciates your answer to the question posed by Senator Sherrod Brown during your confirmation hearing on the issue of DIR fees:

Small and rural pharmacies are critical to our nation’s health care system and have been especially important during the pandemic. It can be hard for these pharmacies to predict retroactive DIR fees. We must do all we can to ensure that Americans can access important health care services, including from local pharmacies in their communities. If confirmed, I look forward to working with Congress to ensure that community pharmacists have predictability and to lower drug prices for patients and families.⁶

³ Centers for Disease Control and Prevention. (2018). CDC’s Social Vulnerability Index (SVI) interactive map. Retrieved from <https://svi.cdc.gov/map.html>

⁴ Brooks-LaSure, C. (2021). Testimony of Chiquita Brooks-LaSure before the U.S. Senate Committee on Finance. Retrieved from https://www.finance.senate.gov/imo/media/doc/Chiquita%20Brooks%20LaSure%20Opening%20Statement_WRITTEN%20FINAL.pdf

⁵ Centers for Medicare & Medicaid Services. (2021). Department of Health and Human Services Fiscal Year 2022, Centers for Medicare & Medicaid Services Justification for Estimates for Appropriations Committees. Retrieved from <https://www.cms.gov/files/document/fy2022-cms-congressional-justification-estimates-appropriations-committees.pdf>

⁶ Senate Committee on Finance. (2021). Questions for the record from Senator Sherrod Brown. Retrieved from <https://ncpa.org/sites/default/files/2021-05/04-15-21%20CMS%20Administrator%20Questions%20for%20the%20Record.pdf>

CMS issued a proposed rule in 2018 on pharmacy price concessions, which would eliminate retroactive pharmacy DIR fees by amending the definition of “negotiated price” to include all pharmacy price concessions.⁷ This would require plan sponsors to reflect the lowest possible reimbursement that a network pharmacy could receive from a Part D sponsor for a covered Part D drug. **NCPA strongly urges CMS to move forward with the 2018 proposed rule (see [NCPA’s comments in response to the proposed rule](#)) to eliminate retroactive pharmacy DIR fees immediately; it is within CMS’ authority to address this issue, providing immediate and desperately needed relief to small business independent community pharmacies and lowering out-of-pocket costs for Medicare beneficiaries, allowing them access to their medications at the lowest possible cost at the time they pick up their prescriptions.**

- **CMS Must Retain the Pharmacist Patient Care Authorities and Flexibilities Provided During the Public Health Emergency:** During the COVID-19 public health emergency, to mitigate and prevent infections, HHS and its subagencies triggered several authorities and instituted several regulatory flexibilities for pharmacists and other clinicians. Many of these flexibilities should be made permanent as they have significantly increased patient access without compromising patient care.

Specifically, NCPA urges CMS to make permanent: 1) pharmacists’ ability to perform diagnostic testing (including serological and antibody tests) under Medicare; 2) pharmacists’ ability to perform testing under Medicaid; and 3) the ability of standalone accredited diabetes self-management training (DSMT) programs that are unaffiliated with hospitals and physician clinics, such as pharmacies, to provide telehealth services to new or established beneficiaries. Given the financial and human resources dedicated to scaling up these service models coupled with their patient access benefits, retaining them is a commonsense approach to ensuring our healthcare system is ready for the next public health threat. NCPA has previously commented on the need for these flexibilities to be made permanent and the imperative need for payment of pharmacist provided services in Medicare and Medicaid in response to CMS’ interim final rules dated March 30, 2020 (see [here](#)) and April 30, 2020 (see [here](#)).

- **CMS Must Require Detailed Part D Reporting Requirements on Pharmacy Performance Measures:** On April 18, 2021, NCPA provided comments to CMS (see [here](#)) in response to an information collection request. CMS now requires Part D Plans to submit pharmacy performance measures and data related to their application to CMS starting January 1, 2022. NCPA encourages CMS to move to maximize the reporting requirements of the Part D plans to provide as much specifics as possible on the measures used in determining DIR

⁷ Part D and Medicare Advantage to lower prices and reduce out-of-pocket expenses. 83 Federal Register 62152 (November 30, 2018), 62152-62201.

fees. NCPA also encourages CMS to make all the information public as soon as practically possible.

- **Develop Part D Plan Guidance for Medical at Home Pharmacy Services:** The pandemic and changing delivery of healthcare services has highlighted the growing need for a medical at home model. The medical at home model provides the same services to a population of patients as they would receive in an LTC facility in their homes, which is a lower cost and more comfortable and functional environment. LTC pharmacies are providing the same valuable services they are providing to skilled nursing facility patients, but the services are being delivered in the patient's home. NCPA urges CMS to recognize medical at home pharmacy services and issue Part D plan guidance formally recognizing these services at the same level as other LTC services. NCPA also urges CMS recommend states include medical at home pharmacy services as part of their Home Community-Based Services (HCBS) benefits package (see [here](#) for a stakeholder letter dated July 2, 2020 on the need for medical at home pharmacy services during COVID-19 and [here](#) for additional information on medical at home pharmacy services).

During our meeting in December, we were able to provide an overview of the essential role community pharmacies have played during the pandemic and the vital role they play in the lives of consumers in "normal" times. We respectfully request the opportunity to meet with you to continue our discussion of the critical role independent community and LTC pharmacies play in achieving our shared public health goals. We look forward to working with you to strengthen Medicare and Medicaid—two pillars of our health care system—to improve quality, lower costs, and expand access. Again, on behalf of America's independent community pharmacists, congratulations on your appointment as CMS Administrator. Please do not hesitate to contact me at (703) 838-2648 or doug.hoey@ncpa.org to further discuss how NCPA can be of assistance to you as you take the helm of CMS.

Sincerely,



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