

July 22, 2021

Mr. Bharat Ramamurti  
Deputy Director

Ms. Hannah Garden-Monheit  
Senior Policy Advisor

Mr. Timothy Wu  
Special Assistant to the President

National Economic Council  
The White House  
Washington, D.C. 20500

Dear Mr. Ramamurti, Ms. Garden-Monheit, and Mr. Wu:

On behalf of the National Community Pharmacists Association (NCPA), I am writing you to applaud the Administration with issuing the “Executive Order on Promoting Competition in the American Economy”. Every day, our members, who are small business owners, see and feel the effects of a lack of vigorous antitrust enforcement – which negatively impact their ability to remain viable and continue to serve their patients. We appreciate the Administration moving to redress the impact consolidation and lack of enforcement has had on our membership and the millions of consumers they serve each week.

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. 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.

We welcome the views of the Administration that more stringent review of proposed mergers in the healthcare sector, specifically, those related to prescription drug middlemen known as pharmacy benefit managers (PBMs), is necessary and appreciate the Federal Trade Commission (FTC) accepting the responsibility to review and revise their guidelines for horizontal and vertical mergers. Additionally, we welcome the Administration’s willingness to review previous mergers to ensure consummation has not

impacted the healthcare sector negatively. NCPA has previously provided comments<sup>1</sup> to the FTC on the negative effects of consolidation in the industry for both independent pharmacies and patients, and we welcome the opportunity to continue to speak on those concerns.

We believe that PBMs engage in anticompetitive behavior and their proliferation into and combining with other adjacent parts of the healthcare sector continue to be a significant issue threatening the survival of community pharmacy and patient healthcare access. PBMs continue to engage in practices which serve to increase their dominant market share:

- Discriminatory Contracting: PBMs offer community pharmacies “take it or leave it” contracts with low reimbursements which fail to cover ingredient cost and professional dispensing fees while increasing service fees and offering PBM-owned pharmacies more advantageous deals.
- Patient Steering: PBMs steer patients away from community pharmacies to PBM-owned pharmacies by excluding community pharmacies from preferred Medicare Part D networks, coercing seniors to obtain their prescriptions from PBM owned pharmacies.
- Conflicts of Interest: PBMs regularly design plans, “Do Not Sell” lists, and pricing lists to require, coerce, or incentivize patients to use a PBM-owned pharmacy option over another retail pharmacy.

Our members see first-hand at the pharmacy counter that rising drug prices continue to be an issue impacting the bank accounts of many Americans and appreciate the Administration addressing this as well. Upon notification of the contents of the Executive Order, NCPA provided HHS Secretary Becerra (see enclosed copy) with information regarding a significant policy proposal HHS can move forward immediately to address pharmacy direct and indirect remuneration fees which inflate drug costs. NCPA is hopeful Secretary Becerra will include the proposed rule referenced in the letter in his 45-day report in order to address pharmacy DIR fees.

Additionally, we wish to reiterate to the Administration that NCPA requires certain minimum requirements to be met in order to support the importation of prescription drugs.<sup>2</sup> While we recognize achieving cost savings for prescription drugs is beneficial to address rising costs to both patients and the federal government, we have concerns about unintended consequences such as patient safety, the possibility of standards lower than those established by the Drug Supply Chain Security Act, disappointing cost savings that fail to deliver on the hope for better patient access, costs associated with managing and

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<sup>1</sup> <https://ncpa.org/sites/default/files/2021-06/NCPACommentFTCMultilateralPharmaceuticalMergerTaskForce.pdf>

<sup>2</sup> <https://ncpa.org/sites/default/files/2020-09/02-21-20%20NCPA%20Comments%20to%20FDA%20Importation%20Draft%20%20Guidance.pdf>

dispensing drugs from different approval processes and preventing comingling of inventory, as well as limited shelf and storage space.

We appreciate the opportunity to share with you our comments and suggestions and wish to continue this dialogue in the future as the Administration explores solutions to benefit patients and the issues facing community pharmacy small business owners. Should you or your office have any questions or need further information, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Douglas Hoey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

B. Douglas Hoey, Pharmacist, MBA  
Chief Executive Officer

Enclosure: Letter from NCPA to Secretary Becerra, 7/19/21

July 19, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave, SW  
Room 600E  
Washington, DC 20201

Dear Secretary Becerra:

On behalf of the National Community Pharmacists Association (NCPA), I appreciate the task assigned to you by President Biden in the “Executive Order on Promoting Competition in the American Economy” to find and report solutions within 45 days of signing to combat the excessive cost of prescription drugs, strengthen the supply chain, and reduce the cost to the Federal government. Every day, our members see the firsthand effects of increasing drug prices on our patients and share a desire to address this problem.

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. 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.

To assist in your task, I wish to inform you of the most important policy initiative to our membership - which we believe will address the concerns of the President and accomplish the goals of the Administration, as directed under the Executive Order:

- **Fix Pharmacy DIR Fees**: We urge the Administration to consider the finalization of CMS’ proposed rule on pharmacy price concessions (83 Fed. Reg. 62,152 (Nov. 30, 2018)), which would eliminate retroactive pharmacy DIR fees by amending the definition of “negotiated price” to include all pharmacy price concessions, fees, and payment to be included at the point of sale. 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 and develop a standard set of quality and performance metrics to provide pharmacies with more predictability. According to the fiscal year 2022 budget justification estimate sent to Congress by CMS,

pharmacy DIR fees increased by 91,500 percent between 2010 and 2019.<sup>1</sup> CMS' own estimate is the average growth of pharmacy price concessions will be approximately 10% per year going forward<sup>2</sup>. Failing to respond to this issue only leads to an untenable situation which threatens the existence of community pharmacy – particularly in rural and underserved areas of the country. In the published notice in the Federal Register, CMS estimated finalizing this proposal would save Medicare beneficiaries \$7.1 to \$9.2 billion in reduced cost sharing over 10 years, which translates into approximately \$200 per senior per year on average, even while accounting for a slight increase in premiums<sup>3</sup>. Pharmacy DIR fees increasingly result in higher out-of-pocket cost-sharing for Medicare Part D beneficiaries and including pharmacy DIR fee reform in HHS' report will lower costs at the pharmacy counter for patients.

We appreciate the opportunity to share with you our comments, as we share the same goal of reducing drug costs for patients. Additionally, we welcome the willingness of you and your staff to engage in dialogue with us on the issues facing community pharmacy. Should you or your office have any questions or need further information, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Douglas Hoey". The signature is fluid and cursive, with the first name "B." and last name "Hoey" clearly visible.

B. Douglas Hoey, Pharmacist, MBA  
Chief Executive Officer

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<sup>1</sup> <https://www.cms.gov/files/document/fy2022-cms-congressional-justification-estimates-appropriations-committees.pdf>, pg 242

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25945.pdf>

<sup>3</sup> <https://www.federalregister.gov/documents/2018/11/30/2018-25945/modernizing-part-d-and-medicare-advantage-to-lower-drug-prices-and-reduce-out-of-pocket-expenses>