

Statement for the Record: The National Community Pharmacists Association (NCPA)

United States Senate Committee on Finance

Hearing: "Prescription Drug Price Inflation: An Urgent Need to Lower Drug Prices in Medicare"

March 16, 2022

Chairman Wyden, Ranking Member Crapo, and Members of the Committee:

Thank you for conducting this hearing on prescription drug affordability and the need to lower costs for patients. In this statement, NCPA will offer support and suggestions on a number of policy considerations that would lower out of pocket costs for seniors, provide certainty for pharmacies, and protect taxpayers by bringing more transparency to Medicaid spending.

NCPA represents America's community pharmacists, including 19,400 independent community pharmacies. Almost half of all community pharmacies provide long-term care services and play a critical role in ensuring patients have immediate access to medications in both community and long-term care (LTC) settings. Together, our members represent a \$67 billion healthcare marketplace, employ 215,000 individuals, and provide an expanding set of healthcare services to millions of patients every day. Our members are small business owners who are among America's most accessible healthcare providers.

Our pharmacies and the patients they serve have long had concerns about pharmacy benefit managers (PBMs), their anticompetitive practices, and the role they play in ever-increasing drug costs. These concerns have been further exacerbated because of the COVID-19 pandemic's impact on small businesses. Independently owned pharmacies have served as lifelines as essential businesses during the pandemic, but PBM practices are causing these small businesses to struggle to remain viable and keep doors open to provide continued access and care. We appreciate the efforts of the Chairman and Ranking Member to discuss these practices and the impact on the drug prices on Medicare patients.

Pharmacy direct and indirect remuneration (DIR) fee reform

NCPA has long advocated for relief from Medicare Part D pharmacy DIR fees, a top priority. In January, the Centers for Medicare & Medicaid Services (CMS) released a proposed rule which would address many of the concerns NCPA has raised with the agency, this Committee, and the relevant Committees of jurisdiction in the House of Representatives. In the rule, CMS acknowledges

pharmacy price concessions, also known as pharmacy DIR fees, have increased more than 107,400 percent over a 10-year period.¹

NCPA provided comments to CMS on the proposed rule, requesting the agency to resolve or clarify the several issues summarized below to have a positive impact on patients, the Medicare program, and community pharmacies.²

NCPA requested CMS provide the following to maximize the benefit for patients and community pharmacies:

- **CMS must ensure transparency of pharmacy reimbursement at the point of sale and ensure the lowest possible reimbursement equals the amount paid on a pharmacy remittance advice, paid within the CMS prompt pay rules of 14 calendar days. Transparency to pharmacies and patients is critical. Therefore, CMS needs to:**
 - clarify that the definition of “other stakeholders” includes the dispensing pharmacy;
 - verify the lowest possible reimbursement will be visible to pharmacies at the point of sale on the paid claim response;
 - provide clear guidance that any post-point-of-sale adjustments must be positive incentive payments for pharmacy performance only;
 - specify that the coordination-of-benefits requirements do not apply to pharmacy incentive payments;
 - confirm that all pharmacy price concessions must be attributable at the claim level even if not computed or assessed at the time of dispensing the Medicare Part D drug;
 - address how CMS guidance would apply if plan sponsors or PBMs were to begin restructuring pharmacy fees on a basis other than claim-level fees;
 - require that pharmacy administrative service fees are properly reported by Medicare Part D plans, as plans are currently incentivized not to report these fees at all;
 - clearly provide a workable and inclusive definition of pharmacy price concession that addresses any fee paid by a pharmacy or deducted from payments to a pharmacy, or any other remuneration received directly or indirectly by the Medicare Part D sponsor or its intermediary contracting organization.
- **CMS must close the coverage gap loophole.** The proposed rule creates a loophole that would treat patients differently depending on their phase in the Medicare Part D benefit, would permit PBMs to continue to play games with pharmacy price concessions for pharmacies and inflate prescription costs for the most vulnerable patients, and would add needless

¹ Proposed Rule: Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs, <https://www.federalregister.gov/d/2022-00117/p-714>.

² NCPA offers these comments on the proposed rule without commenting on CMS’ statutory authority to modify the definition of “negotiated prices.” NCPA is presently the lead plaintiff in a lawsuit challenging CMS’ existing regulatory definition of “negotiated prices,” see *NCPA v. Becerra*, No. 1:21-cv-131 (D.D.C.), and nothing in this letter should be construed as a waiver of the arguments that NCPA and the other plaintiffs have made in the litigation challenging the existing regulatory definition.

administrative expenses by forcing the use of two systems, one within the coverage gap and the other outside of it.

- **CMS must require standardized pharmacy performance measures for incentive payments.** There is currently an inequitable application of metrics for community pharmacies. Even pharmacies that earn high performance ratings are nevertheless punished by pharmacy DIR fees based on arbitrary PBM measures.
- **CMS must enforce existing network adequacy and contract provision requirements.** Maintaining adequate access for patients to prescription drugs is predicated on the participation of pharmacies in Medicare Part D plan networks.
- **CMS must address NCPA’s concerns and recommendations when promulgating the final rule for small business pharmacies to remain viable participants in the Medicare Part D program.** An “Actuarial Memorandum of the Model and Assumptions in Analyzing the 2023 Proposed Rule Regarding Pharmacy Price Concessions at Point of Sale” was prepared for Avalere Health on behalf of NCPA.³ NCPA commissioned this memorandum because CMS failed to adequately test the assumptions that this proposal could result in a “modest” potential indirect positive effect on pharmacy payment, and CMS did not consider this proposal’s impact on small business pharmacies. The memorandum reveals that CMS miscalculated the positive impact on pharmacy. If plans lower net reimbursement by 2 percent because of this rule, a reasonable assumption based on PBMs’ long history of reduced pharmacy reimbursement in the Medicare Part D program, the average pharmacy would face a 2 percent reduction in reimbursement.⁴

We are grateful that Congress included some version of pharmacy DIR fee reform in every drug pricing package over the last legislative cycle (Grassley-Wyden, H.R. 3, H.R. 19, and S. 3129), which has helped to get us to the point where CMS is moving forward with rulemaking to apply all pharmacy price concessions at the point of sale. However, if this rule is finalized, it may be necessary to have additional statutory authority and clarity that would allow CMS to move forward to address other issues, such as standardized quality metrics. We hope that Congress will work with us to standardize pharmacy quality metrics for pharmacy incentive payments this year, so that comprehensive pharmacy DIR fee reform can be implemented in 2023.

Conclusion

In conclusion, prescription drug prices continue to grow at an alarming rate. There are many factors in the pharmaceutical supply chain and delivery system that may contribute to this growth, including pharmacy benefit manager “middlemen.” NCPA stands ready to work with Congress and the administration to implement policies that will lower drug prices at the pharmacy counter for our patients.

³ See discussion at p. 14 and Appendix attached of NCPA comment letter at, <https://ncpa.org/sites/default/files/2022-03/ncpa-comment-cms-part-d-proposed-rule.pdf>.

⁴ Actuarial Memorandum of the Model and Assumptions in Analyzing the 2023 Proposed Rule Regarding Pharmacy Price Concessions at Point of Sale, prepared for Avalere Health and commissioned by NCPA, p. 9 & Table 7 (Appendix to comment letter).