

Submitted electronically to Linwood.Rayford@sba.gov

June 8, 2023

Major Clark
Deputy Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Re: Concerns with CMS' CY 2023 Medicare Part D [Final Rule](#)

Deputy Chief Counsel Clark,

The National Community Pharmacists Association (NCPA) writes today to provide updates to the impact of CMS' [final rule](#): *Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency* on small business pharmacies, ahead of the rule's January 1, 2024 implementation date.

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 \$78.5 billion healthcare marketplace, employ 240,000 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.

DIR Fees Putting Viability of Independent Pharmacy at Risk

Independent pharmacies are closing at an alarming rate and are in pain and at an inflection point with increased stress from pharmacy DIR fees. Medicare Part D pharmacy direct and indirect remuneration (DIR) fees now account for approximately 5-6 percent of gross prescription revenue from *all* payers, representing the third highest expense after cost of goods sold (COGS) (78%) and payroll (13.1%). According to MedPAC's March 2023 Report to Congress, pharmacy DIR fees were \$12.6 billion for 2021 (a \$3.1 billion (+33%) increase from \$9.5 billion in 2020).¹

Harmful DIR trends are only getting worse. For Medicare Part D CY24 contract offerings, our members are seeing approximate reimbursements at average wholesale price (AWP)-26% + \$0

¹ See [MedPAC March 2023 Report to the Congress: Medicare Payment Policy](#), page 399.

dispensing fee (30 day supply) and AWP-31% + \$0 dispensing fee (90 day supply) for brands. These reimbursement rates represent pricing significantly below community pharmacies' cost to purchase brand drugs. To put this in perspective, pharmacies purchase brand drugs on average at wholesale acquisition cost (WAC) – 4 %, which approximates AWP – 20 %. Rates such as this coupled with year-over-year double-digit increases in DIR fees will make the first 3-6 months of 2024 unbearable for independent pharmacies, as they continue to pay DIR fees from CY23. Pharmacies will have to draw from more lines of credit/building reserves, and cash flow is a dire concern.

CMS Stated That It Could Not Interfere with Payment Plans

As January 1, 2024, the date for which the rule is fully effective, approaches we write to express ongoing concerns of our small business pharmacy members. After NCPA and the small business pharmacies we represent expressed concerns in our comments to the proposed rule about cash flow implications of this rule, CMS responded in the final rule that:

CMS understands these concerns but does not have the authority to mandate payment plans between plans sponsors and pharmacies. We acknowledge the possibility that changes in cash flow may cause some already struggling pharmacies to decrease services or medication availability, and/or be unable to remain in business, which may impact pharmacy networks.²

CMS further stated that “payment plans or alternative payment arrangements” could be a solution, but as cited above, CMS asserted that it did not have the authority to enforce such arrangements:

...we encourage Part D sponsors to consider options, such as payment plans or alternate payment arrangements, to minimize impacts to vulnerable pharmacies and the patients they serve.³

Impact of Final Rule on Small Business Pharmacies

CMS was unable to accurately study and quantify the impact of this final rule on small business pharmacies. For example, CMS stated that “We do not have sufficient data to determine impacts by type of pharmacy, as the pharmacy price concessions are not reported in connection to a particular pharmacy or type of pharmacy.”⁴

A new survey released by NCPA indicates that a strong majority of independent community pharmacy owners/managers are concerned about upcoming cash flow challenges resulting from changes resulting from the final rule, effective January 1, 2024.⁵ In fact, a staggering 98% of

² [2022-09375.pdf \(govinfo.gov\)](#), page 27843.

³ [2022-09375.pdf \(govinfo.gov\)](#), at 27843.

⁴ [2022-09375.pdf \(govinfo.gov\)](#), at 27886.

⁵ See [Economic Health Survey - Sharedexplore - Public-view \(alchemer.com\)](#).

respondents indicated concerns. Additionally, a large majority (85%) of respondents say they are working now to prepare, but there remains palpable fear that pharmacy closures are a real possibility.⁶

Conclusion

NCPA thanks SBA for the opportunity to provide feedback, and we stand ready to work with SBA to offer possible solutions and ideas. Should you have any questions or concerns, please feel free to contact me at ronna.hauser@ncpa.org or (703) 838-2691, and my colleague Steve Postal, Director of Policy and Regulatory Affairs, at steve.postal@ncpa.org or (703) 600-1178.

Sincerely,



Ronna B. Hauser, PharmD
Senior Vice President, Policy & Pharmacy Affairs
National Community Pharmacists Association

⁶ For NCPA's press release, see: [NCPA Survey: Majority of Independents Concerned About, Prepping for "DIR Hangover" | NCPA](#)