

Congress of the United States

Washington, DC 20515

July 8, 2024

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244–1850

Meena Seshamani, M.D., Ph.D.
CMS Deputy Administrator and
Director of the Center for Medicare
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244–1850

RE: Call for CMS to Not Impose DIR Fees on Drugs in the Inflation Reduction Act That Are Assessed a Maximum Fair Price (MFP)

Dear Administrator Brooks-LaSure and Deputy Administrator Seshamani,

As the Center for Medicare and Medicaid Services (CMS) works to implement provisions of the Inflation Reduction Act (P.L. 117-169), the undersigned ask that CMS ensure that plans and pharmacy benefit managers (PBMs) do not charge direct and indirect remuneration (DIR) fees to pharmacies for negotiated drugs. Implementation of IRA requirements must not result in additional financial pressure and loss for our nation’s pharmacies. The IRA is clear that pharmacies are not to be reimbursed below the “maximum fair price” (MFP) for negotiated drugs. We are concerned that pharmacies will be reimbursed below the MFP, especially if DIR fees are assessed on these drugs. Additionally, pharmacy reimbursement should be reasonable and cover acquisition cost plus margin plus include a commensurate professional dispensing fee (currently, PBMs pay retail pharmacies dispensing fees far below the actual cost to dispense, as low as \$0). Long-term care (LTC) pharmacies and specialty pharmacies should be safeguarded from being disproportionately affected, given LTC and specialty pharmacies’ higher dispensing costs compared to the retail setting, based on CMS’s ten criteria for LTC pharmacy and the patient service requirements for specialty. Additionally, CMS should not require any reporting of pharmacy’s acquisition cost given anti-competitive concerns.

Pharmacies are already facing significant cash flow concerns in Medicare Part D, and failing to establish protections against DIR fees on MFP drugs or to ensure appropriate pharmacy dispensing fees and prompt payment to pharmacies (as required by the IRA) would exacerbate those concerns. According to a recent survey¹ by the National Community Pharmacists Association, 32 percent of all respondents say they are considering closing their doors in 2024 because of the cash crunch in Medicare. **Ninety-three percent say they may drop out of Medicare Part D in 2025 if this year’s experience continues, which would decimate patient access across the country, especially for senior citizens.** More than half of all respondents say Medicare Part D prescriptions account for 40 percent or more of their business. According to the survey, 99 percent of respondents say their prescription reimbursements have gone down since CMS’s *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* Final Rule² took effect on January 1, 2024.

¹ National Community Pharmacists Association, *Local Pharmacies on the Brink, New Survey Reveals* (February 27, 2024) (Online at <https://ncpa.org/newsroom/news-releases/2024/02/27/local-pharmacies-brink-new-survey-reveals>).


² Federal Register, *Section 1198(b)(1)(C)*, p. 36 (May 9, 2022) (Online at <https://www.federalregister.gov/documents/2022/05/09/2022-09375/medicare-program-contract-year-2023-policy-and-technical-changes-to-the-medicare-advantage-and>).


The Inflation Reduction Act created an exception to non-interference in the Part D clause in Section 1860D–11(i) of the Social Security Act.³ **We request that CMS use this exception to establish a price structure for the Medicare Drug Price Negotiation Program, specifically a financially viable model of pharmacy reimbursement including but not limited to a maximum fair price that accounts for margin on the ingredient cost of the drug, plus a required and economically viable professional dispensing fee, and that Part D plans and PBMs cannot pay pharmacies at less than that maximum fair price. Further, we request that CMS ensure that PBMs cannot assess pharmacy DIR fees on MFP drugs.**


Pharmacy “deserts” are proliferating in the country, especially in some of the areas where our country’s most socially vulnerable populations reside.⁴ In 2023, there were over 300 independent pharmacy *net* closures — in other words, *every day* patients have one fewer independent pharmacy from which to choose. Additionally, there are approximately 2,200 fewer retail pharmacies than there were four years ago—an overall 4 percent decrease in pharmacy choices for patients—and that pattern of pharmacy closures is increasing. Based on the most recent data through February 29, 2024, independent pharmacy net closures continue at approximately one store per day. **We urge CMS to act to preserve all pharmacy access for seniors by addressing the financial pressures that risk further eliminating access to the pharmacy of their choice.**

We thank CMS for the opportunity to provide feedback, and we stand ready to work with CMS to offer solutions.

Sincerely,


Raja Krishnamoorthi
Member of Congress


Donald G. Davis
Member of Congress


Vicente Gonzalez
Member of Congress

³ United States Code, 42 U.S.C. §1395w–111(i)(3), “[the Secretary] may not institute a price structure for the reimbursement of covered part D drugs, except as provided under part E of subchapter XI [the Medicare Drug Price Negotiation Program provisions]” (Online at <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter7-subchapter18-partD-subpart2&saved=%7CKHRpdGxIOjQyIHNIY3Rpb246MTM5NXctMTE1IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>).

⁴ University of Pittsburgh, *Mapping U.S. Pharmacy Closures* (Accessed June 13, 2024) (Online at <https://storymaps.arcgis.com/stories/21620f1e07c14d7f81adc4503faaf51e>).