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December 27, 2024

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N-5653
U.S. Department of Labor
Washington, DC 20210
Attention: 1210-AC25

Re: Proposed Rule for Enhancing Coverage of Preventive Services Under the Affordable Care Act [RIN 1210-AC25]

Docket Management Staff,

The National Community Pharmacists Association (NCPA) appreciates the opportunity to provide comments to the Internal Revenue Service's, Employee Benefits Security Administration's, and the Centers for Medicare & Medicaid Services' (collectively, the Agencies') Proposed Rule *Enhancing Coverage of Preventive Services Under the Affordable Care Act* that among other things, would require group health plans and health insurance issuers ("health plans/insurers") to cover over-the-counter (OTC) contraceptive items without the requirement for a prescription and without imposing cost-sharing requirements.

NCPA represents America's community pharmacists, including 18,900 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 employ 205,000 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. NCPA submits these comments on behalf of both community and LTC independent pharmacies.

In response to this proposed rule, we recommend the following:

- I. **Adopt policies that require health plans/insurers to reimburse providers of OTC contraceptive items at reasonable and fair reimbursement rates that will cover the cost of the product as well as cost of dispensing.**
 - II. **Require health plans/insurers to adopt a standardized approach to claims processing that can be implemented by different provider types and that supports clear and consistent billing practices with minimal administrative burdens for different providers.**
 - III. **As an interim means of ensuring coverage of OTC contraceptive items until such time as uniform claims processing and billing standards can be implemented, encourage plans to provide beneficiaries with an FSA-style prepaid credit or debit card that could be used to purchase covered OTC contraceptive items.**
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I. Adopt policies that require health plans/insurers to reimburse providers of OTC contraceptive items at reasonable and fair reimbursement rates that will cover the cost of the product as well as cost of dispensing.

NCPA has highlighted the predatory and anti-competitive practices of pharmacy benefit managers (PBMs). These intermediaries carry immense control over prescription drug access and reimbursement, squeezing independent pharmacies and ultimately harming patients. Independent pharmacies continue to struggle with unfair and below-cost reimbursements and are closing at a rate of more than one independent pharmacy per day in 2024.¹ In July 2024, the House Committee on Oversight and Accountability published [a report on PBMs](#) that showed how patients are seeing “significantly higher costs with fewer choices and worse care” as a result of PBMs and vertical integration.²

Based on pharmacies’ experiences with PBMs and the results of previous House and Senate investigations on PBM practices, we encourage the Agencies to adopt policies that prevent unfair reimbursements by requiring prompt, adequate reimbursements to providers for covered OTC contraceptive items.

We also ask the Agencies to consider policies that prevent PBMs from engaging in unfair or abusive practices that prioritize their own financial interests over patient access to essential medications. Specifically, we advocate for the proposed rule to mandate that health plans and insurers (and by extension, their PBMs) ensure in-network coverage of OTC contraceptive items is handled comparably to other recommended preventive services. For instance, if health plans, insurers, or PBMs do not generally require mail-order fulfillment for other covered pharmacy benefits, they should not mandate it for OTC contraceptives.

II. Require health plans/insurers to adopt a standardized approach to claims processing that can be implemented by different provider types and that supports clear and consistent billing practices with minimal administrative burdens for different providers.

During the COVID-19 PHE, pharmacies were able to prove and bill for OTC COVID-19 diagnostic tests, and that process may inform the Agencies on implementation of other covered OTC products. The implementation of programs allowing pharmacies to provide and bill for OTC COVID-19 diagnostic tests without cost sharing, prescriptions, or provider involvement yielded positive results once emergency guidance on using the NCPDP Telecommunication standard (Telecom) was available. If a program to cover OTC preventive services at no cost (with or without a prescription) will rely on a Telecom transaction, the Agencies should work with NCPDP to assess industry readiness for HIPAA-compliant claims. Telecom transactions rely on National Drug Codes (NDCs) which may not exist for all OTC preventive products, something the emergency guidance addressed during the COVID-19 public health emergency. In other words, claims that would identify the product with a UPC would not be HIPAA-compliant.

In instances where pharmacies agreed to process real-time claims, they successfully facilitated testing for Medicare beneficiaries with Part B coverage which is not administered by PBMs. However, guidance for Medicaid MCO plans varied inconsistently due to differences in state coverage rules, leading to potential discrepancies in implementation. Additionally, reimbursement must be sufficient to cover the product cost plus a profitable markup and the overhead costs associated with recordkeeping and claims processing.

III. As an interim means of ensuring coverage of OTC contraceptive items until such time as uniform claims processing and billing standards can be implemented, encourage plans to provide beneficiaries with an FSA-style prepaid credit or debit card that could be used to purchase covered OTC contraceptive items.

To minimize administrative burden on pharmacies and streamline the payment process for beneficiaries, NCPA strongly recommends the adoption of an FSA-style system for reimbursing covered OTC preventive products. This approach offers several advantages over workflow and recordkeeping in traditional reimbursement methods, including: simplified payment for pharmacies and other retailers, ease of payment for beneficiaries, reduced administrative burden, increased patient access to OTC preventive products, and alignment with existing infrastructure.

NCPA thanks the Agencies for the opportunity to provide feedback, and we stand ready to work with the agency to offer possible solutions and ideas. Please let us know how we can assist further, and should you have any questions or concerns, please feel free to contact me at jessica.satterfield@ncpa.org or (703) 838-2669.

Sincerely,



Jessica Satterfield, PharmD, MBA
Associate Director, Policy & Pharmacy Affairs
National Community Pharmacists Association

- a. <https://www.pharmacytimes.com/view/ncpa-2024-in-spite-of-challenges-independent-pharmacies-are-continuing-to-serve-patients>
- b. <https://oversight.house.gov/wp-content/uploads/2024/07/PBM-Report-FINAL-with-Redactions.pdf>