

Phair Pricing Act – S. 640 / H.R. 1034

Part D plan sponsors and pharmacy benefit managers extract pharmacy DIR fees from pharmacies on a retroactive basis. The retroactive nature of these pharmacy DIR fees breeds uncertainty with reimbursement and makes it difficult for independent community pharmacists to operate their small businesses. These fees come in all sorts of shapes and sizes and often include onerous “quality”-based retroactive fees that are unfairly and inconsistently applied to pharmacies that have little to no control of such measures. In January 2017, the Centers for Medicare & Medicaid Services warned that the rise in pharmacy DIR fees has increased Medicare costs to the government and forced more beneficiaries into the coverage gap, or donut hole.¹ Additionally, CMS noted that in 2018, pharmacy price concessions, net of all pharmacy incentive payments, grew an extraordinary 45,000 percent between 2010 and 2017.²

Solution: Direct all pharmacy DIR, excluding positive incentive payments, between a pharmacy and a Part D plan sponsor or PBM to be assessed at the point of sale.

The *Phair Pricing Act*, introduced by Sen. John Kennedy (R-La.) as S. 640 in the Senate and by Reps. Doug Collins (R-Ga.) and Vicente Gonzales (D-Texas) as H.R. 1034 in the House, addresses the retroactive nature of these fees and ensures pharmacy quality is measured consistently and appropriately.

These bipartisan bills would:

- Direct all pharmacy DIR fees, excluding positive incentive payments, between a pharmacy and a Part D plan sponsor or PBM to be included at the point of sale.
- Require PBMs and plans to provide pharmacies with claims level data on applicable pharmacy DIR fees.
- Direct the Secretary of Health and Human Services to establish quality measures that apply to pharmacy operations and require all Part D sponsors to utilize the HHS-established quality measures that are standardized and pharmacy-specific.

Congress should enact the *Phair Pricing Act* to:

- **Boost transparency in drug pricing.** Prohibiting these retroactive pharmacy fees will make the Medicare Plan Finder more accurate and allow better CMS oversight.
- **Give seniors reduced cost-sharing and greater budget predictability.** Beneficiaries who use their drug plan to fill prescriptions are punished the most by pharmacy DIR fees. This is because retroactive fees lead to increase in patients’ coinsurance and drug spend at the pharmacy counter.
- **Preserve access to independent community pharmacies.** Locally owned pharmacies provide enhanced care and are often located in underserved areas, but as the use of pharmacy DIR fees has increased, the number of independent community pharmacies has declined. A recent study estimates that 3 million rural residents are at risk of losing the only pharmacy in their community with the next nearest pharmacy over 10 miles away,³ a trend exacerbated by pharmacy DIR fees.

¹ CMS, “Medicare Part D –Direct and Indirect Remuneration,” available at <https://www.cms.gov/newsroom/mediareleasedatabase/fact-sheets/2017-fact-sheet-items/201701-19-2.html>.

² 83 Fed. Reg. 62,178, 62,174 (proposed Nov. 30, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-25945.pdf>.

³ RUPRI Center for Rural Health Policy Analysis, “Issues Confronting Rural Pharmacies after a Decade of Medicare Part D,” April, 2017.