April 1, 2016

Cynthia Tudor
Deputy Center Director, Center for Medicare
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244


Dear Deputy Director Tudor:

I am writing to you on behalf of the National Community Pharmacists Association (NCPA). NCPA represents the interests of America’s community pharmacists, including the owners of more than 22,000 independent community pharmacies. Together they represent an $81.4 billion health care marketplace and employ more than 314,000 individuals on a full or part-time basis.

NCPA is writing to express our concerns and those of our members regarding the non-compliance of multiple Part D Plans and PBMs regarding the usage of drug pricing standards that are used to reimburse Medicare pharmacies that clearly do not reflect “the market price of acquiring the drug”—in direct violation of federal statute. Section 173 of The Medicare improvements for Patients and Providers Act (MIPPA) requires Medicare Part D plans that utilize a standard for reimbursement of pharmacies based on the cost of a drug update such standard not less frequently than once every seven days “to accurately reflect the market price of acquiring the drug.” Building upon this provision that has existed in federal statute since 2008, the 2015 Final Part D Rule specifically extends this requirement to Maximum Allowable Cost (MAC) pricing methodologies beginning in 2016.

“We believe that the updating requirement should apply to pricing standards based on the cost of a drug, even when the standard is not based on published drug pricing, an approach consistent with the intent of the statute. We believe that this statement of purpose indicates that Congress intended to provide pharmacies with a means of ensuring that they have current..."
data on the amount of reimbursement that they can expect, including in cases in which the reimbursement is based upon maximum allowable cost prices. When a prescription drug pricing standard is not published publicly, network pharmacies are unable to promptly determine whether their reimbursement is consistent with their contractual arrangements. This, in turn presents risks to the Medicare Part D program in a number of ways.”

Thus far in 2016, there are have been multiple Part D plans and associated Pharmacy Benefit Managers (PBMs) that have been utilizing MAC drug pricing values that pharmacies see prior to or at the time the claim is adjudicated that are far below what would be considered to be reasonably approaching the “market price of acquiring the drug.” In these instances, pharmacies are dispensing these medications to seniors at significant financial losses. To compound this problem, recently pharmacies that participate in one very large Part D Plan/PBM recently received notice from the Plan through their contracting entity that all MAC pricing from January 1 to the current date has been in error and that the plan will begin recouping the overpaid amounts that will consist of 47% based on ingredient cost paid.” The irony of this most recent correspondence is that the Part D plan in question is one that since the beginning of the year has openly acknowledged that many of the individual MAC values that were being provided to pharmacies were significantly underwater. In fact, this same Plan has made no secret of the fact that they have been working diligently to update their MAC pricing as reflected at the point of sale to make certain that pharmacies were treated fairly.

This most recent set of events when added to the overall lack of conformance of MAC values with the pharmacists’ cost to acquire the drug, indicates that many of these Part D plans and PBMs are manipulating MAC “drug pricing standards” as a proprietary variable that can be changed on a whim with no relation whatsoever to the “market price of acquiring the drug.” This blatant disregard for federal statute is serving to undermine the Part D program as a whole and truly jeopardizes the ability of pharmacies to serve these patients. In addition, these blatantly inaccurate MAC values and wide swings of increasing and then reducing—calls into question the accuracy of drug pricing information available to Part D beneficiaries via the Plan Finder.

While we recognize that CMS cannot dictate to Part D plan sponsors and PBMs the actual reimbursement method they utilize to reimburse pharmacies, this does not prevent CMS from issuing
guidance or establishing common terminology surrounding these reimbursement methods to ensure that Plan sponsors are indeed in compliance with statutory requirements and to maintain Medicare Part D program integrity. NCPA would recommend that CMS further define or provide guidance on what exactly is meant by “the market price of acquiring the drug” and put Part D plans and PBMs on notice that they must be able to verify compliance with this requirement. Based on statutory requirement, plan sponsors and PBMs must be to demonstrate that MAC values have a some correlation or “tie” to the network pharmacy acquisition cost.

In conclusion, NCPA appreciates the opportunity to bring these concerns to your attention and looks forward to continuing to dialogue on this issue.

Sincerely,
Susan Pilch, J.D.
Vice President, Policy and Regulatory Affairs