BRIEFING: DIR Reform Provisions in CMS Drug Pricing Rule

On Nov. 30, 2018, the Centers for Medicare and Medicaid Services formally published the proposed rule, *Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out-of-Pocket Expenses.*[1] The proposed rule features critical policy changes related to NCPA and NACDS' top advocacy priority – pharmacy DIR reform. NCPA and NACDS have aggressively advocated for the DIR reforms in this proposal because they benefit pharmacies and the patients they serve. While this document only outlines NCPA and NACDS' support for the proposal on pharmacy price concessions, there are several other policy changes in the proposed rule that NCPA and NACDS will consider commenting on separately during the notice and comment period.

What does the proposal do?

The proposal requires all pharmacy price concessions to be included in the "negotiated price," a term used in Medicare Part D to mean the price the pharmacy will be reimbursed at the point of sale for dispensing a drug.[2] Patients should note that their cost-sharing is calculated as a percentage of the negotiated price at the point of sale.

What are pharmacy price concessions?

Pharmacy price concessions are a subset of direct and indirect remuneration (DIR). They currently are charged to pharmacies on a retroactive basis, meaning they are not included in the negotiated price at point of sale. Pharmacy price concessions can include fees to participate in a preferred network and/or fees based on STAR Measures.[3] Another type of DIR is manufacturer rebates. While CMS has contemplated moving manufacturer rebates to point of sale to further patient savings, the rule proposed on November 30, 2018, does not contemplate that change.

What does applying pharmacy price concessions at the point of sale mean for patients?

CMS says it best: "Beneficiary cost-sharing is generally calculated as a percentage of the negotiated price. When pharmacy price concessions are not reflected in the negotiated price at the point of sale . . . beneficiary cost-sharing increases, covering a larger share of the actual cost of a drug."[4]

Patients win when pharmacy price concessions are included in the negotiated price and applied at the point of sale. In fact, CMS estimates that beneficiaries would save $7.1 to $9.2 billion over 10 years resulting from reduced cost-sharing, offset by slightly higher premiums.[5] The savings could be significantly higher for those patients who have some of the most expensive drugs.

Community pharmacists support this proposal because it would lower patient costs at the pharmacy counter and provide clarity in pharmacy cash flow. CMS backs this proposal because it helps patients and has only limited beneficiary premium impact, "while still improving price transparency in a meaningful way."[6]

---

[1] 83 Fed. Reg. 62152 (proposed Nov. 30, 2018).

[2] The proposal also excludes from the negotiated price any incentive payments to pharmacies. Excluding incentive payments to pharmacies ensures that the negotiated price does not appear higher at high performing pharmacies who receive an incentive payment while the price appears lower at a lower performing pharmacies who is assessed a penalty. *Id.* at 62178.

[3] Pharmacy price concessions are the second largest category of DIR received by sponsors and PBMs, behind only manufacturer rebates. CMS states, "[t]he data show that pharmacy price concessions, net of all pharmacy incentive payments, grew more than 45,000 percent between 2010 and 2017." *Id.* at 62174.

[4] *Id.* at 62176.

[5] *Id.* at 62154. In the proposed rule, CMS states that this proposal would raise premiums by $10.16 a month but reduce patient cost-sharing by $26.69 a month.

[6] *Id.* at 62179.