December 2, 2019

The Honorable Frank Pallone
Chairman, Energy & Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member, Energy & Commerce Committee
United States House of Representatives
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone & Ranking Member Walden:

Pharmacies need relief from Medicare Part D pharmacy direct and indirect remuneration (DIR) fees now because these fees continue to be detrimental to small businesses and the patients they serve. A study by the Rural Policy Research Institute found that under-reimbursements led to the closure of 1,231 independent pharmacies in rural areas between 2003 and 2018. As a result, 630 rural communities nationwide that had at least one retail pharmacy in 2003 had zero retail pharmacies in 2018.[1] The situation is no better in urban areas; between 2009 and 2015, 1 in 8 pharmacies closed as a result of under reimbursements in the Medicaid and Medicare programs, disproportionately affecting independent pharmacies and low-income neighborhoods.[2]

Pharmacy closures "are associated with nonadherence to prescription medications, and declines in adherence are worse in patients using independent pharmacies that subsequently closed."[3] What's more concerning, a recent NCPA member survey conducted in October shows that 58% of independent pharmacies are somewhat or very likely to close in the next 2 years without relief from pharmacy DIR fees.[4] This is detrimental to millions of patients who are losing access to local healthcare providers.

NCPA has long advocated that CMS must prohibit retroactive pharmacy DIR fees that Part D plan sponsors and their pharmacy benefit managers (PBMs) claw back from pharmacies months after prescriptions have been filled, and instead require any fees be assessed at point of sale. These retroactive DIR fees harm small business community pharmacies and artificially raise out of pocket drug costs for our nation's sickest seniors, pushing them into the donut hole at an accelerated rate. NCPA has also advocated for the standardization of pharmacy performance measures in Medicare Part D, in tandem to address DIR fees.

In 2018, CMS proposed a rule that would have required all pharmacy DIR be assessed at the point of sale, except positive contingent amounts. However, the administration failed to finalize the proposal in May

[1] Abiodun Salako, Fred Ullrich & Keith Mueller, Update: Independently Owned Pharmacy Closures in Rural America, 2003-2018, RUPRI Center for Rural Health Policy Analysis, July 2018, Rural Policy Brief No. 2018-2, available at https://rupri.public-health.uiowa.edu/publications/policybriefs/2018/2018%20Pharmacy%20Closures.pdf.
[2] Jenny S. Guadamuz, G. Caleb Alexander, Shannon N. Zenk & Dima M. Qato, Assessment of Pharmacy Closures in the United States From 2009 Through 2015, JAMA Internal Medicine, Oct. 21, 2019, available at www.jamainternalmedicine.com.
[3] *Id.*
[4] NCPA Survey: Health of Independent Pharmacy, Oct. 2019, *available at* http://www.ncpa.co/pdf/survey-health-cp.pdf.


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2019, even though CMS estimated the proposal would save beneficiaries between $7.1 and $9.2 billion over 10 years or *almost $200/year in savings for seniors at the pharmacy counter, after accounting for slight increases in premiums*.[5] In the alternative, current Senate and House proposals (S. 2543, the *Prescription Drug Pricing Act (PDPRA) of 2019* and H.R. 3, the *Lower Drug Costs Now Act of 2019*, respectively) both include language to require HHS to standardize quality measures for the purposes of pharmacy incentive payments or price concessions but they do not require that all pharmacy DIR be assessed at the point of sale.

The standardization of pharmacy performance measures alone will not achieve the intended outcome pharmacies and patients need. Standardizing quality metrics without requiring all pharmacy DIR be assessed at the point of sale leaves a loophole for the PBMs to exacerbate the current problem. Performance-based DIR primarily results in a penalty assessed against a pharmacy.[6] The standardization of pharmacy performance measures would still allow for the retroactive assessment of these penalties that would continue to be arbitrary and unpredictable on basic pharmacy operations. CMS has projected that the average growth of pharmacy price concessions will be approximately 10% per year for the next 10 years.[7]

True relief from pharmacy DIR fees can only be achieved if Part D plan sponsors and their PBMs are required to assess any pharmacy fees at the point of sale. PBMs and plan sponsors will not voluntarily eliminate retroactive pharmacy DIR fees because they are so lucrative to them, despite the negative impact on patients and local pharmacies. CMS has stated that from 2010 to 2017, pharmacy DIR has increased 45,000% in Medicare Part D and from 2013 to 2017, pharmacy DIR has increased from $229 million to $4 billion.[8]

PBMs claim that requiring all pharmacy DIR be assessed at the point of sale would increase premiums for seniors and raise costs for taxpayers. This is not the case, as PBMs offered independent community pharmacies Part D contracts for 2020 that included terms barring retroactive DIR, and CMS recently announced record low premiums. Prohibiting retroactive pharmacy DIR fees will instead lead to significant patient savings at the pharmacy counter, vital considering that in 2020, the Medicare Part D out of pocket spending threshold will increase from $5,100 to $6,350.

Small business community pharmacies need relief from DIR fees and their patients need relief from high drug costs now. NCPA urges you to enact meaningful reform requiring that all pharmacy DIR be assessed at the point of sale.

Sincerely,

Douglas Hoey, Pharmacist, MBA
NCPA CEO

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[5] 83 Fed. Reg. 62152, 62154 (proposed Nov. 30, 2018).

[6] NCPA highlights that in CMS' recent proposed rule to address pharmacy DIR, CMS proposed to amend the negotiated price definition to effectively require the assessment of all pharmacy DIR at the point of sale, excluding positive contingent amounts that could be based off of incentive payments to pharmacies. However, in the proposed rule even CMS acknowledged that incentive payments to pharmacies are "quite rare." *Id.* at 62178. NCPA continues to argue that pharmacies should be incentivized to achieve certain performance metrics via positive payments, not by penalizing high performers via reduced DIR fees.

[7] *Id.* at 62191.

[8] *Id.* at 62174.