July 14, 2015
Statement of the National Community Pharmacists Association
Hearing: "Medicare Part D: Measures Needed to Strengthen Program Integrity"
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

Chairman Murphy, Vice Chairman McKinley, Ranking Member DeGette, and members of the Committee,

Please accept the following comments providing the thoughts and recommendations of the National Community Pharmacists Association (NCPA) regarding the findings of two recent Office of Inspector General (OIG) reports on Medicare Part D program integrity that are the focal point of this hearing. NCPA represents the interests of pharmacist owners, managers and employees of nearly 23,000 independent community pharmacies across the United States. Together they employ over 300,000 full-time employees and dispense nearly half of the nation's retail prescription medicines.

Independent community pharmacists are proud to play a vital role in the Medicare Part D program, and have been on the front lines of providing medications, related counseling, and assistance with plans since the inception of the Part D program. More than any other segment of the pharmacy industry, independent pharmacies are often located in the underserved and rural areas that are home to many Medicare recipients. While NCPA remains supportive of efforts to prevent and reduce fraud, waste and abuse within the Medicare Part D program, they must be delicately balanced with ensuring appropriate patient access to vitally important medications.

NCPA is Strongly Supportive of OIG Recommendations to Require Part D plan sponsors to Report Potential Fraud and Corrective Actions Taken by Plans to CMS

The OIG states that although the Centers for Medicare and Medicaid Services (CMS) currently encourages Part D plan sponsors to report potential fraud and abuse or the steps taken by the plan sponsor to detect or stop it, this is not required. In addition, the OIG found that less than 50% of plan sponsors currently report this information to CMS. NCPA is supportive of this proposed requirement that would enable CMS to conduct more detailed data analyses of this type of activity in order to more accurately identify potential trends or troublesome patterns. The OIG mentions measures that have already been suggested to CMS including requiring plans to implement an edit to reject prescriptions when written by excluded providers. NCPA supports this proposal specifically and we are actively engaged with CMS and industry partners to implement this requirement.

Related to improved drug utilization controls for other drug classes, NCPA cautions CMS on expansion of controls into other drug classes at this time. Community pharmacy is a heavily regulated profession, and pharmacists are expertly trained to monitor and address cases of overutilization. Although we understand the need to more closely monitor the use of acetaminophen (APAP) and opioids in the Part D program, we are opposed to any expansion to other classes at this time. There are also efforts led by CMS to reduce the use of antipsychotic medications in long term care (LTC) settings, through initiatives such as the National Partnership to Improve Dementia Care. We are concerned that imposing additional controls at this time is unduly burdensome and could impact timely care for our patients.

The OIG also indicates that the Medicare Drug Integrity Contractors (MEDICs) do not currently use data analysis to detect potential fraud and abuse in a majority of investigations. In the past, some parties in the

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industry have been reluctant to support a measure to turn over such data to private contractors in the absence of a requirement that plan sponsors be similarly required to submit such data to CMS itself. NCPA is supportive of the expanded use of MEDICs provided that plan sponsors are also required to turn over the same data to CMS.

NCPA Categorically Opposes Any Attempt by Part D Providers to Circumvent Rules and Regulations but Recommends that Corrective Action be Targeted and Caution Used to Ensure Beneficiary Access to Legitimate and Needed Medications

NCPA opposes any attempts by Part D providers to circumvent rules and regulations and professional standards of practice but notes that the five measures used to identify "questionable pharmacy billing practices" in the OIG reports by themselves may not tell the entire story. For example, a pharmacy may dispense a high percentage of controlled substances when compared to other pharmacies in a particular geographic area; however, this could be due to factors such as the pharmacy in question serves a large number of oncology practices, is a contracted pharmacy provider for long-term care facilities, or is located next to a physician office specializing in pain management. In addition, another one of the "red flags" as noted by the OIG includes "the average number of prescriptions per beneficiary." This factor, in and of itself, may not necessarily signal questionable billing on the part of the pharmacy but rather may indicate an overprescribing issue by one or more medical professionals.

NCPA cautions against simply using the five factors stated in the OIG reports to definitively identify a particular pharmacy as using "questionable billing." As noted in the above examples, some of these factors could easily be attributed to other legitimate factors.

Any Proposal to Restrict Certain Beneficiaries to a Limited Number of Pharmacies or Prescribers Must be Carefully Tailored and Include Critical Beneficiary Protections

Another prior OIG proposal that is noted in the two reports under discussion today would allow plan sponsors to restrict certain beneficiaries to a limited number of pharmacies or providers. Historically, NCPA has had concerns with proposed "lock-in" proposals primarily due to the fact that without detailed beneficiary protections, some patients may experience delays in accessing much needed pain medications. Another secondary, yet considerably significant issue from a market fairness perspective is that a number of Medicare Part D plan sponsors have existing commercial relationships with certain large chains or with their proprietary mail-order pharmacy operations, raising serious conflict of interest concerns if the plan has the ability to "assign" a beneficiary to a particular pharmacy.

It should be noted that in virtually all of the 46 state Medicaid "lock-in" programs, the beneficiary retains the ability to choose both the in-network prescriber and pharmacy. There are currently several federal legislative proposals on this topic that would allow the beneficiary to "indicate preferences" for those providers and pharmacies that the beneficiary "would prefer the PDP sponsor select." This language is not clear enough and ultimately vests the PDP sponsor with the authority to make the selection for the beneficiary which could create a serious conflict of interest issue – if plan sponsors can assign beneficiaries to a pharmacy in which they have a financial interest. NCPA strongly encourages that any legislative proposals on this topic be amended to change "preferences" to "choices." Patients deserve to play an active role in how their health care is provided.

Conclusion

NCPA appreciates the opportunity to provide our comments and suggestions on the two recent OIG reports and stands committed to work with all government and industry stakeholders to combat fraud, waste and abuse in Medicare Part D.