The issue – Retroactive Fees on Pharmacies Participating in the Medicare Part D Program:

Front-line pharmacists have been involved with the success of the Medicare Part D program from inception. Along the way there have been situations that called for Part D changes, such as in 2008 when Congress required that pharmacies be paid promptly (within 14 days) for clean claims in order to remain viable and pay their suppliers. It is difficult to run a business and care for patients when unaware what or when you will be paid. Recently pharmacists have been put in the untenable position of not knowing what their true reimbursement will be until months after they have dispensed Part D drugs, due to direct and indirect remuneration or "DIR" fees.

The solution:

S. 3308 / H.R. 5951 will prohibit Medicare Part D plan sponsors/PBMs from retroactively reducing payment on clean claims submitted by pharmacies under Medicare Part D, therefore eliminating retroactive pharmacy fees.

S. 3308 / H.R. 5951 WILL…

- **S. 3308 / H.R. 5951 will provide greater transparency in drug pricing.** Retroactive fees inflate costs on Plan Finder so prohibiting these fees will make Medicare Plan Finder more accurate and reliable. CMS is concerned that consumers cannot currently minimize both cost sharing and costs to taxpayers by seeking and finding the lowest-cost drug/pharmacy combination.
- **S. 3308 / H.R. 5951 will lower cost-sharing for many beneficiaries at the pharmacy counter.** This is because retroactive fees lead to inflated drug costs and therefore the cost sharing that beneficiaries are responsible for is based on inflated costs. This is particularly important as the average percentage of covered drugs facing coinsurance has risen sharply from 35 percent in 2014 to 58 percent in 2016 among PDPs per an Avalere analysis published March 10, 2016.
- **S. 3308 / H.R. 5951 will improve Medicare Part D program integrity.** CMS recognizes that Part D sponsors are reporting DIR fees in different ways. The reporting differential impacts beneficiary cost sharing, CMS payments to plans, federal reinsurance and low income cost-sharing subsidies, and manufacturer coverage gap discount payments. By eliminating retroactive DIR fees, S. 3308 / H.R. 5951 will ensure program costs are reported correctly and consistently.

<u>S. 3308 / H.R. 5951 WILL NOT…</u>

- **S. 3308 / H.R. 5951 will not increase Medicare Part D costs.** Currently plans that report increased DIR fees understate their bids, therefore offering lower bids and lower premiums based solely on how costs are reported to CMS. S. 3308 / H.R. 5951 will not change total costs to the Medicare Part D program, only how they are reported to CMS.

- **S. 3308 / H.R. 5951 will not impede the ability of Part D plans/PBMs to implement "pay for performance" programs**. S. 3308 / H.R. 5951 will allow health plans and PBMs to implement appropriate pharmacy pay-for-performance programs that are aligned with current Medicare value-based programs. Currently, community pharmacies experience *penalty*-for-performance by paying DIR fees associated with quality measures.

What has MedPAC said About DIR Fees?

According to MedPAC's 2015 Report to Congress: "MedPAC sees insurers gaming the system to hold premiums down and maximize enrollment." MedPAC members argue in their report that insurers seem to be consistently overestimating enrollees' ordinary drug costs and underestimating the costs for enrollees with catastrophic expenses. In a nutshell, Part D sponsors are manipulating these pharmacy fees to artificially lower patient premium amounts which ensures that they maximize patient enrollment amounts while raising patient out of pocket drug costs.

In addition, the Centers for Medicare & Medicaid Services (CMS) has expressed concern over pharmacy price concessions like DIR fees. CMS has noted "variations in the treatment of costs and price concessions affect beneficiary cost sharing, CMS payments to plans, federal reinsurance and low income cost-sharing (LICS) subsidies, manufacturer coverage gap discount payments, and plan bids."