



National Grocers Association

January 24, 2019

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Room 600 E
Washington, DC 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Blvd.
Baltimore, MD 21244

Re: Docket No. CMS 4180-P, *Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out-of-Pocket Expenses*

Via electronic submission

Dear Secretary Azar and Administrator Verma,

The National Grocers Association (NGA) appreciate the opportunity to provide comment on the Centers for Medicare and Medicaid Services' proposed rule, *Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out-of-Pocket Expenses (CMS 4180-P)*. This proposed rule is of interest to NGA's member supermarkets operating pharmacies.

NGA is the national trade association representing the independent sector of the supermarket industry. NGA defines an independent not by size, but rather by ownership and include companies that are privately held, family-owned, or employee owned. Our members range

from single store operators to large regional chains operating in multiple states. NGA's members are in every congressional district and are truly the backbone of the communities they serve. Independent supermarkets in the United States account for approximately \$131 billion in annual sales and employ nearly 1 million workers. Nearly half of NGA's members are small business owners.

Independent supermarkets operate approximately 3,000 pharmacies across the country and are located in all fifty states. In many communities an independent supermarket pharmacy may be the only pharmacy for miles. Many communities depend heavily on their local independent supermarket pharmacy and the critical services they provide.

NGA's comments will focus specifically on the issue of pharmacy direct and indirect remuneration (DIR) fees and the impact these out-of-control fees have had on independent supermarket pharmacies. NGA commends CMS for addressing this issue and strongly supports the Agency's efforts to increase drug price transparency at the point of sale. We also support the administration's goal of lowering out-of-pocket costs and stabilizing the operating environment for independent and community pharmacies.

To share a better perspective on the explosive growth of these fees, NGA polled several its members that operate pharmacies. One regional supermarket chain that operates around 30 pharmacies, including many in small town, rural America, noted that DIR fees five years ago were zero. Last year those fees exceeded one million dollars and continue to grow! These fees have had a significant negative impact on their pharmacy operations including their ability to open new pharmacies.

Another NGA member that operates more than 120 pharmacies across a three-state area also shared the enormous increase they have experienced in DIR fees. Over a two-year period, this member has seen DIR fees increase from just over one million dollars to more than eight million dollars for 2018, an 87 percent increase! This retailer noted that their highest DIR fee claw backs often occur in pharmacies that service social economically challenged communities where many patients cannot afford medications. PBMs are penalizing pharmacies with DIR fees because a patient does not have the funds to pay for their medication or have failed on a therapy and cannot take a drug due to side effects. When DIR fees are clawed back they often lack documentation that is easy to identify the prescription being referenced.

Another large regional independently owned supermarket chain operating in excess of 100 pharmacies reported that its fees increased 250 percent from 2017 to 2018 and even with adding additional staffing it was only able to recoup a very small amount of fees (3.79 percent) due to unrealistic performance measures. It also reported that their pharmacies are upside down on many high dollar drugs due to the low profit margin and the DIR fee calculated on a percentage of ingredient cost. The retailer also noted that pharmacies in their area are closing

and selling their files, usually to a larger chain pharmacy and therefore forcing the patient to drive further distances for pharmacy services.

The administration should finalize the proposed changes to the negotiated price definition that seeks to include all pharmacy DIR at the point of sale. This requirement brings much needed transparency and will effectively eliminate retroactive pharmacy DIR. This change will help lower out-of-pocket spending for Medicare patients. CMS notes in the proposed rule that price concessions, net of all pharmacy incentive payments, have grown more than 45,000 percent between 2010 and 2017. While shocking, this number isn't surprising given the feedback that NGA has received from its members.

While moving DIR fees to the point of sale is a positive start, NGA urges CMS to undertake a deeper review of the entire DIR fee structure. Currently there is no supervision of DIR fees. The pharmacy benefit managers (PBMs) unilaterally set DIR fees based on the metrics they want to use and every PMB sets DIR fees differently. Some DIR fees have nothing to do with the patient's overall health, but rather have become a lucrative form of revenue for the PBMs at the expense of independent and community pharmacies and their patients. NGA urges the administration to play an active role in developing or approving a standard set of performance metrics on which plans and pharmacies base their contractual agreements.

NGA members share the administration's goal to lower out-of-pocket costs for Medicare patients. Patients win when pharmacy price concessions are included in the negotiated price and applied at the point of sale. This lowers the negotiated price, the benchmark by which patient cost-sharing is based, effectively ensuring that patients will not pay more out-of-pocket at the pharmacy, be pushed more rapidly through their deductible phase, and enter the donut and catastrophic phases of the Medicare Part D program more quickly.

The ever-increasing, unpredictable, and retroactive nature of pharmacy DIR fees makes it virtually impossible for our member pharmacies to plan for the future. NGA members have shared that most DIR fees are taken from their pharmacies months after the prescription was filled. Six months isn't uncommon, making it nearly impossible to plan for the future and keep a handle on cash flow. Each time one of our members fills a prescription they are uncertain that the payment indicated at the time of dispensing will be the ultimate payment received. Requiring all pharmacy DIR fees to be applied at the point of sale provides some needed stabilization to the operating environment of our member's pharmacies.

NGA also urges the administration to implement safeguards that would provide for reasonable reimbursement to pharmacies participating in Medicare Part D. Many NGA members operate pharmacies in small towns and rural America where residents have limited pharmacy options. Preserving competition in the marketplace helps assure consumers will have competitive options. NGA member pharmacies have reported that reimbursements received for Medicare

Part D are often less than their pharmacy's costs (drug acquisition plus cost to dispense). These underwater reimbursements are often used to pressure pharmacies out of a market, harming consumers and local communities. NGA urges the administration to ensure that the negotiated price should, at a minimum, cover the pharmacy's cost of purchasing and dispensing covered items and providing covered services.

Our member pharmacies provide so much more than dispensing of medications. They are a trusted source and know many of their patients by name. Unfortunately, many of them are deciding whether to continue offering pharmacy services, as supermarkets already operate on razor-thin profit margins. Plan sponsors paying the lowest possible reimbursement and offering to let the pharmacy earn incentives back could also create a negative cash flow in an already low profit margin business. These backward incentive structures in the pharmacy business will inevitably lead to closures of locally owned and community owned pharmacies, resulting in a massive reduction in pharmacy access to underserved communities throughout the country.

In conclusion, NGA urges the administration to quickly finalize the proposed rule and consider the recommendations that we have provided in this comment letter. We commend the administration for proactively working to address these critical issues that directly impact thousands of locally owned community and independent pharmacies and the patients we serve. Thank you for the opportunity to provide our perspective for the pharmacies operated by independent supermarkets across the country. Should you have questions or need further information please contact Greg Ferrara (gferrara@nationalgrocers.org) or Christopher Jones, Esq (cjones@nationalgrocers.org)

Sincerely,

The National Grocers Association