



**U.S. HOUSE ENERGY AND COMMERCE
HEALTH SUBCOMMITTEE
“Making Prescription Drugs More Affordable: Legislation to
Negotiate a Better Deal for Americans”
Wednesday, September 25, 2019
Statement for the Record
The American Pharmacists Association**

Chairwoman Eshoo and Ranking Member Burgess, the American Pharmacists Association (APhA) is pleased to submit the following Statement for the Record to the U.S. House of Representatives Committee on Energy and Commerce *Subcommittee on Health* hearing entitled “Making Prescription Drugs More Affordable: Legislation to Negotiate a Better Deal for Americans.”

APhA appreciates the bipartisan leadership of many members of the Subcommittee to address Direct and Indirect Remuneration (DIR) fee reform this year¹ and your continued efforts to lower prescription drug prices for Americans.

APhA, founded in 1852 as the American Pharmaceutical Association, represents nearly 60,000 pharmacists, pharmaceutical scientists, student pharmacists, pharmacy technicians, and others interested in improving medication use and advancing patient care. APhA members provide care in all practice settings, including community pharmacies, specialty pharmacies, physicians’ offices, hospitals, long-term care facilities, specialty pharmacy, community health centers, managed care organizations, hospice settings and the uniformed services.

DIR Fees/ Clawbacks

APhA has long had policy supporting the pharmaceutical industry’s adoption of a “transparent pricing” system which would eliminate hidden discounts, free goods, and other non-transparent economic devices,² like rebates between manufacturers and PBMs. As recognized by the Centers for Medicare and Medicaid Services (CMS), certain PBM practices can result in higher prices at point-of-sale and consequently, higher beneficiary co-pays. As the Subcommittee understands, DIR fees were originally designed to capture rebates and other mechanisms not included at the point-of-sale.³ However, the term “DIR fees” have been re-defined by PBMs and are now being used beyond their original purpose to retroactively adjust pharmacies’ payment months after the

¹ Joint House Letter to President Trump on DIR Fees. June 18,, 2019, available at:

<https://media.pharmacist.com/documents/Joint+House+Letter+to+POTUS+on+DIR+Fees.pdf>

² APhA. House of Delegates. Current Adopted Policy Statements 1963-2017 (JAPhA NS8:362 July 1968) (JAPhA NS44(5):551 September/October 2004) (Reviewed 2006)(Reviewed 2011)(Reviewed 2016). Available at:

<https://www.pharmacist.com/sites/default/files/files/16898%20CURRENT%20ADOPTED%20POLICY%20MANUAL%20-%20FINAL.pdf>

³ See, CMS. Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program. Final Rule. 83 FR 16440. April 16, 2018. Available at: <https://www.federalregister.gov/documents/2018/04/16/2018-07179/medicare-program-contract-year-2019-policy-and-technical-changes-to-the-medicare-advantage-medicare>

sale, sometimes below the price paid by the pharmacy. In the November 2018 proposed Medicare Part D rule, CMS documented an extraordinary 45,000 percent increase in DIR fees paid by pharmacies from 2010 to 2017.⁴ CMS also affirmed that when price concessions between pharmacies and Medicare Part D plan sponsors or their PBMs (e.g., DIR fees) “...are not reflected in the price of a drug at the point of sale, beneficiaries might see lower premiums, but they do not benefit through a reduction in the amount they must pay in cost-sharing, and thus, end up paying a larger share of the actual cost of a drug.” CMS goes on to acknowledge that “[n]umerous research studies further suggest that the higher cost-sharing that results can impede beneficiary access to necessary medications, which leads to poorer health outcomes and higher medical care costs for beneficiaries and Medicare.”⁵

PBM DIR fees and “clawbacks” mask the real price of medications, increase the price patients pay, and interfere with pharmacists’ ability to provide patient care. APhA was very disappointed that HHS chose not to finalize certain DIR fee reforms they originally recommended in the proposed rule, “Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out-of-Pocket Expenses” (CMS-4180-P).⁶ APhA supports legislative and regulatory initiatives to require price concessions between pharmacies and plan sponsors or their PBMs (e.g., DIR fees and/or similar policies/terminology, such as “true up” practices) be reflected in the negotiated price made available at the time a medication is dispensed at the point-of-sale. According to CMS estimates, implementing this change would significantly reduce net beneficiary costs by \$10.4 billion⁷ and give community pharmacies greater predictability regarding reimbursement rates.

APhA would like to thank the Subcommittee for continuing to work with us and other pharmacy stakeholders to increase transparency of PBM practices and lower prescription drug prices for pharmacies and patients. Please contact Alicia Kerry J. Mica, Senior Lobbyist, at AMica@aphanet.org or by phone to (202) 429-7507 to arrange a meeting to discuss the many services pharmacists provide to improve patient care, outcomes and reduce costs.

⁴ See, CMS. Modernizing Part D and Medicare Advantage To Lower Drug Prices and Reduce Out-of-Pocket Expenses. Proposed Rule. Pg. 62174. November 20, 2018, available at: <https://www.federalregister.gov/documents/2018/11/30/2018-25945/modernizing-part-d-and-medicare-advantage-to-lower-drug-prices-and-reduce-out-of-pocket-expenses>.

⁵ See, CMS. Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program. Draft Rule. 82 FR 56336. November 28, 2017. Available at: <https://www.federalregister.gov/documents/2017/11/28/2017-25068/medicare-program-contract-year-2019-policy-and-technical-changes-to-the-medicare-advantage-medicare>

⁶ Available at: <https://www.federalregister.gov/documents/2018/11/30/2018-25945/modernizing-part-d-and-medicare-advantage-to-lower-drug-prices-and-reduce-out-of-pocket-expenses>.

⁷ See, TABLE 11: 2019 - 2028 POINT-OF-SALE PHARMACY PRICE CONCESSIONS IMPACTS. Page 338. Available at: <https://www.federalregister.gov/documents/2017/11/28/2017-25068/medicare-program-contract-year-2019-policy-and-technical-changes-to-the-medicare-advantage-medicare>