

Statement for the Record: The National Community Pharmacists Association (NCPA)

United States House Committee on Energy and Commerce

Subcommittee on Health

Hearing: "Negotiating a Better Deal: Legislation to Lower the Cost of Prescription Drugs"

May 4, 2021

Chairwoman Eshoo, Ranking Member Guthrie, and Members of the Subcommittee:

Thank you for conducting this hearing on prescription drug affordability and the need to lower costs for patients. In this statement, NCPA will offer support and suggestions on a number of policy considerations that would lower out of pocket costs for seniors, provide certainty for pharmacies, and protect taxpayers by bringing more transparency to Medicaid spending.

The National Community Pharmacists Association represents America's community pharmacists, including more than 21,000 independent community pharmacies. Almost half of all community pharmacies provide long-term care services (LTC) and play a critical role in ensuring patients have immediate access to medications in both community and LTC settings. Together, our members represent a \$74 billion health care marketplace, employ approximately 250,000 individuals, and provide an expanding set of health care services to millions of patients every day. Our members are small business owners who are among America's most accessible health care providers, often serving as the only pharmacy in many rural and urban medically underserved areas.

Our pharmacies and the patients they serve have long had concerns about pharmacy benefit managers (PBMs), their anticompetitive practices, and the role they play in ever-increasing drug costs. These concerns have been further exacerbated because of the COVID-19 pandemic's impact on small businesses. Independently-owned pharmacies have served as lifelines as essential businesses during the pandemic, but PBM practices are causing these small businesses to struggle to remain viable and keep doors open to provide continued access and care.

Pharmacy direct and indirect remuneration (DIR) fee reform

NCPA has long advocated for relief from Medicare Part D pharmacy DIR fees, a top priority. These post point-of-sale clawbacks are wreaking havoc on the business operations of our members and are a threat to their ability to offer pharmacy services to consumers. The Centers for Medicare & Medicaid Services (CMS) has estimated that pharmacy DIR fees grew a whopping 45,000 percent between 2010 and 2017. An October 2019 NCPA member survey showed that 58 percent of

independent pharmacies — representing over 12,000 pharmacy small businesses — are somewhat or very likely to close in the next two years without relief from pharmacy DIR fees.

Retroactive pharmacy DIR fees that Part D plan sponsors and their PBMs claw back from pharmacies months after prescriptions have been filled should be assessed at the point of sale to protect small business pharmacies and stop PBMs from artificially raising out-of-pocket drug costs for our nation's sickest seniors, pushing them into the donut hole at an accelerated rate. Further, NCPA has simultaneously advocated for the standardization of pharmacy performance measures in Medicare Part D to address pharmacy DIR fees. Congress included some version of pharmacy DIR fee reform in every drug pricing package last Congress (Grassley-Wyden, H.R. 3, H.R. 19, and S. 3129). We appreciate that quality measure reform was once again included in both H.R. 3 by Chairman Pallone and H.R. 19 by Ranking Member McMorris Rodgers. However, this alone is not enough as pharmacies and patients urgently need comprehensive reform. For this reason, NCPA strongly supports the full pharmacy DIR fee reform advanced on a bipartisan basis by the Senate Finance Committee in 2019 that prohibits all DIR clawbacks and standardizes pharmacy quality metrics. We urge Congress to enact this vital drug pricing reform this year which would result in out-of-pocket savings for Medicare beneficiaries between \$7.1 and \$9.2 billion over the next decade.

Medicaid managed care spread pricing prohibition

For years, community pharmacists have also said that PBMs have been playing spread pricing games, contributing to higher drug costs to the detriment of patients and the taxpayer-funded programs the PBMs are supposed to serve. Studies of multiple state Medicaid managed care programs have indicated that PBMs are overcharging taxpayers for their services in Medicaid managed care, reimbursing pharmacies low for medications dispensed, billing the state Medicaid program high for the cost of those medications, and retaining the difference, called “spread.”¹ Arkansas, Georgia, Kentucky, Louisiana, New York, Ohio, and Virginia now prohibit spread pricing in their Medicaid managed care programs. Federally, CMS has issued guidance prohibiting managed care organizations in Medicaid managed care programs from counting the “spread” towards medical costs in the medical loss ratio. NCPA has advocated for banning the use of spread pricing by PBMs.

NCPA has long supported the prohibition of spread pricing, especially in the taxpayer-funded Medicaid managed care program. We support state Medicaid managed care programs implementing a “pass-through” model, which includes a transparent benchmark based on National Average Drug Acquisition Cost (NADAC) and a commensurate dispensing fee like those in Medicaid fee-for-service programs. Under a pass-through pricing model, PBMs are paid an administrative fee, which is the only source of revenue under the contract, thus avoiding any costly PBM spread. The Congressional Budget Office (CBO) has estimated this reform, which was included in both House and Senate drug pricing reforms last Congress, would save \$1 billion over 10 years. NCPA applauds the inclusion of this provision again in H.R. 19 and is hopeful that it will again be added to H.R. 3 this year.

¹ National Community Pharmacists Association summary of state Medicaid managed care reforms
<https://ncpa.org/sites/default/files/2020-05/medicaid-managed-care-reform-one-pager.pdf>

PBM anticompetitive vertical integration

For years, NCPA has highlighted the problems posed by increasing consolidation in the health care industry, specifically that three PBMs now control 77 percent of the market.² Most recently, NCPA raised a multitude of significant concerns about the anticompetitive vertical integration of the CVS-Aetna merger. NCPA believes the merger will lead to decreased competition and fewer choices for patients and emphasizes that there is no evidence to support that purported cost savings will lead to lower prices for patients or be passed on to consumers. NCPA has also long been concerned about PBMs steering patients to retail or mail order pharmacies in which the PBM has an ownership interest.

NCPA strongly supports passage of S. 1388, the *Prescription Pricing for the People Act of 2021*, which would require the Federal Trade Commission to study pharmacy benefit managers and how their actions are affecting patients and small business independent pharmacies. NCPA was proud to work with bill sponsors on this legislation last Congress to strengthen language that would shed light on how PBMs are affecting prescription costs and patient choice and bring needed transparency to the pharmaceutical space. This legislation was marked up and advanced by this committee on a bipartisan basis last Congress. Advancing this legislation this year will empower the FTC to review the consolidated PBM industry and their anticompetitive practices, which would provide relief to patients on drug costs and protect their ability to access a pharmacy of their choice. The bill would bring further transparency to PBMs through retrospective reviews from the FTC and support Congress as it crafts evidence-based solutions to address the anticompetitive role PBMs play as pharmaceutical costs continue to rise.

Conclusion

In conclusion, prescription drug prices continue to grow at an alarming rate. There are many factors in the pharmaceutical supply chain and delivery system that may contribute to this growth, including pharmacy benefit manager “middlemen.” NCPA stands ready to work with Congress and the administration to implement policies that will lower drug prices at the pharmacy counter for patients

² <https://www.drugchannels.net/2021/04/the-top-pharmacy-benefit-managers-pbms.html>