

The National Grocers Association (NGA) represents 21,000 independent community grocers and wholesalers across the United States. Independent community grocers account for 33 percent of all grocery sales, exceeding \$250 billion, and more than 1 million American jobs.

PBMs are Taking Advantage of Pharmacies

Independent supermarkets operate over 3,000 pharmacies across the country. In many small towns and rural areas, the grocery store pharmacy is the only healthcare provider in the community. In recent years, too many of these independent and community pharmacies are closing due to a significant rise in DIR fees.

What are DIR Fees?

Direct and Indirect Remuneration (DIR) pharmacy fees are charged to pharmacies by pharmacy benefit managers (PBM) after the sale of a drug is complete, sometime months after a sale. These fees also referred to as “rebates,” “clawbacks,” or “price concessions,” are charged by PBMs for participation in their Medicare Part D pharmacy networks. Due to a loophole in the program, PBMs pocket an excessive amount of pharmacy DIR fees rather than decrease prescription costs for Medicare beneficiaries, as intended. CMS has reported extreme growth in the fees, including more than **107,400%** between 2010 and 2020.

What is being done to address DIR fees?

In May 2022, the Centers for Medicare and Medicaid Services (CMS) issued a final rule, Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192-F). The rule requires DIR fees be assessed at the point-of-sale and are estimated to reduce seniors and people with disabilities’ out-of-pocket expenses by **\$21.3 billion over 10 years**. But this rule leaves an opening for pharmacy benefit managers to create contract terms that allow for penalty payments after prescriptions leave the pharmacy; therefore, retroactive penalties could still occur.

What’s next?

CMS and Congress must fix the outstanding issues in the final rule or more pharmacies will continue to close reducing health care access for families around the United States. NGA has five additional requests that must be addressed to keep pharmacies open.

1. Prohibit DIR Fees and Address Part D Bidding Process

- ◆ DIR fees and PBM incentives must be fully prohibited. The CMS rule continues to permit PBMs to charge pharmacies post-sale price concessions. The rule also did not address the pharmacy DIR incentives that exist for PBMs during their Part D bidding process. Rather, plans can continue to underestimate and over-collect DIR fees and retain what they collect. These issues must be addressed to protect pharmacies.

2. Ensure Full Transparency

- ◆ To ensure full transparency for pharmacies, PBMs must be required to share how they determine the lowest possible reimbursement at the point-of-sale. The CMS must clarify how a pharmacy will know the lowest possible reimbursement it can receive, so it can plan its operations and ensure payment is fair.

3. Require Fair Performance Assessment and Quality Incentives

- ◆ PBMs should be required to offer pharmacies appropriate, fair, and relevant performance-based agreements based on the drugs dispensed and the services they provide. Although the final rule continues to allow for payments to pharmacies based on good performance, pharmacies rarely receive these types of payments, and the rule provides no incentives for PBMs to offer such opportunities to pharmacies. Additionally, the rule did nothing to standardize the fairness of the measures that are used by PBMs to evaluate how pharmacies perform or the quality of their services; for years, these measures have been arbitrary and used to undercut pharmacy payments. Pharmacies need protective from these unfair requirements.

4. Ensure Reasonable Pharmacy Reimbursement

- ◆ Safeguards must be established to guarantee that pharmacies participating in Medicare Part D receive a reasonable rate of reimbursement, which at a minimum, covers a pharmacy's costs of purchasing and dispensing covered items and providing covered services. The CMS rule did not ensure a pharmacy is paid a reasonable amount by health plans and PBMs for the drugs and dispensing services they provide. It is critical that pharmacies not be required to sell drugs below cost, therefore reasonable reimbursement rates must be guaranteed.

5. Address Other Pharmacy Fees and Penalties

- ◆ PBMs are already working to get around the new DIR fee rule and looking to find loopholes to charge pharmacies new fees. The rule sought to set limits around other fees that could circumvent the rule's requirements, but already, pharmacies are seeing new types of fees that sidestep the rule. PBMs must be required to certify or attest that any administrative fees, regardless of what they are called, are actually utilized for administrative services and that such services are relevant and applicable to the pharmacy against which the fee is applied. Fees that the plans collect from pharmacies should either be accounted for in the plan bid as a cost of administering the benefit or they must be acknowledged as part of the "negotiated price," so they may be included in the calculation under the final rule that lowers beneficiaries' out-of-pocket costs.

NGA urges Congress and CMS to address these issues as soon as possible to keep pharmacies open and ensure continued access to independent and community pharmacies throughout the United States.

At the HEART of the community.

National Grocers Association
202.938.2570 | www.nationalgrocers.org

