



1661 Worcester Road, Suite 405
Framingham, MA 01701
Toll Free 800-532-3742
Phone 508-875-1866
FAX 508-875-6108
www.northeastpharmacy.com



facebook.com/northeastpharmacy



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To: All Participating Pharmacies **From:** Pat Monaco, President/CEO

Date: February 28, 2022 **Pages** 4

RE: **NPSC's Comments to CMS on DIR Fees**

For several years NPSC has been working with NCPA and on our own, against draconian DIR fees. We have heard your voices and your stories, and we will continue to speak out whenever we have the opportunity to do so.

In the last couple of years, we have written to all New England Congressional and U.S. Senate offices, state officials in CT, MA, RI, NH, VT and ME and have provided comments twice to the Centers for Medicare and Medicaid Services regarding DIR. We even had a state legislative victory in Maine on claw-backs and on point-of-sale language.

This week, we are submitting comments (see attached) again to CMS on its DIR proposed rule. The proposed rule can be viewed [here](#). We are cautiously optimistic that this rulemaking will be successful. Please feel free to use our comments as a guide to what to write and then submit your comments [here](#). Comments must be submitted by Monday, March 7, 2022.



Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4192-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192-P).

February 28, 2022,

Dear Administrator Brooks-LaSure,

Northeast Pharmacy Service Corporation (NPSC) is a pharmacy service administrative organization (PSAO) that provides services to independent community pharmacies in New England with group purchasing opportunities, third party consultation, advocacy, regulatory affairs along with education and training on new business development.

On behalf of NPSC and its participating pharmacies, we would like to thank you for allowing us to share our general insights on File Code CMS-4192-P.

According to the proposal the proposed rules would *“revise the Medicare Advantage (MA) (Part C) program and Medicare Prescription Drug Benefit (Part D) program regulations to implement changes related to marketing and communications, past performance, Star Ratings, network adequacy, medical loss ratio reporting, special requirements during disasters or public emergencies, and pharmacy price concessions. This proposed rule would also revise regulations related to dual eligible special needs plans (D-SNPs), other special needs plans, and cost contract plans.”*

We would like to support and add commentary to the following sections:

Section C: NPSC supports a requirement for network adequacy to be in compliance at the time of application.

Section F: NPSC believes that a preferred pharmacy disclaimer is necessary. Further we believe that all materials should make it easy for potential enrolled to see if their providers are in the network and their level of copay.

Section H. Pharmacy Concessions in the Negotiated Price (§ 423.100). We are writing in support of the changes within this proposed rule. We have been working with both state and federal

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representatives throughout New England including drafting and passing legislation aimed at reducing the impact of DIR fees for our participating pharmacies. All of our efforts have been as a stopgap until there was a federal solution that addressed the post point-of-sale retroactive pharmacy direct and indirect remuneration (DIR) fees.

While we have seen many pharmacies throughout New England either close their doors or be significantly challenged operationally due to these unconscionable and ever changing fees, we are surprised to learn that even your agency's research cites that pharmacy DIR fees have increased 107,400% over a 10 year period.

First, we believe that CMS needs to make clear that the negotiated price equals the lowest possible reimbursement a pharmacy can receive for a covered Part D drug and verify that this amount must be visible to pharmacies for each individual claim at the point of sale on the adjudicated claim response.

Second, we are requesting CMS to please confirm that any fee related to or assessed because of a Part D prescription drug claim is considered a price concession. This should be true whether the fee represents an administrative fee, a transaction fee, or the value of a contingent amount, such as a performance-based penalty. The fees and price concessions that PBMs utilize in contracts and pharmacy manuals have many different names, but any and all amounts that will be deducted from pharmacy reimbursement must be treated as a price concession and must be fully disclosed to pharmacies on the individual adjudicated claim response and on the pharmacy remittance advice within the prompt pay rules of 14 calendar days.

Also, please confirm that no amount not already applied to the basis for patient coinsurance at the point of sale and reported on the Prescription Drug Event can later be deducted from the pharmacy remittance.

We also request CMS through this proposed rule will ensure that patients will receive the lowest possible price at point of sale during the coverage gap as well as other phases of the benefit.

Our community pharmacies care a lot about their patients and many state policymakers fail to understand that the way that DIR fees are being applied to pharmacies are indirectly affecting patient care as well, since patients are still paying the same if not more cost sharing. The only beneficiary under the current methods that payers are applying DIR to is for the benefit of the payer/pharmacy benefit manager (PBM) since the risk of loss is lessened for the payer/PBM.

Next, we are asking CMS to provide additional clarity around applying DIR to pharmacy performance measures. DIR should not be used as a "pay to play" tool for our pharmacies to serve their own patients. We believe that DIR should be evidence-based that is focused on patient health outcomes and other clearly defined areas that community pharmacy can utilize to provide meaningful and effective change.

Lastly, we are hopeful that CMS finalizes this rule with the changes that we are advocating for in our comments. However; we at NPSC understand that there will be a "transition period" should

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CMS finalize our viewpoints stated here. NPSC wants CMS to know that some accommodation would need to be established in order for pharmacies to have operating capital so they can continue to serve their local communities.

We like many other similarly situated organizations are concerned about cashflow issues for our participating pharmacies if this policy goes into effect January 1st, 2023. Independent pharmacies would have their reimbursement reduced beginning the first quarter of 2023, while still having the obligation to pay 2022 DIR claw-back fees for another 6-months to a year. There needs to be some kind of “soft landing” engineered by CMS so that pharmacies are not any worse off than they are currently under the financially detrimental conditions caused by these unjust DIR fees.

So in essence, we support the following proposals within this proposed rulemaking:

- *First, we propose to delete the current definition of “negotiated prices” (in the plural) and add a definition of “negotiated price” (in the singular) to make clear that a negotiated price can be set for each covered Part D drug. We believe this approach accommodates the different approaches to applying price concessions under sponsor and PBM payment arrangements with pharmacies, which may provide for price concessions to be applied uniformly as a percentage adjustment to the price for all Part D drugs dispensed by a pharmacy or have price concessions differ on a drug-by-drug basis. In addition, defining “negotiated price” in the singular is consistent with the regulations for the coverage gap discount program, which define the term “negotiated price” at § 423.2305, and it is compatible with our existing regulations, which at times refer to the “negotiated price” for a specific drug rather than “negotiated prices” for multiple drugs.*
- *Second, we propose to define “negotiated price” as the lowest possible reimbursement a network pharmacy will receive, in total, for a particular drug, taking into account all pharmacy price concessions.*

We appreciate you allowing us to pass along our viewpoints and we stand by to readily serve as a resource to you.

Sincerely,



Patricia Monaco
President/CEO
Northeast Pharmacy
Service Corporation



Ron Lanton III, Esq.
Corporate Counsel
Northeast Pharmacy
Service Corporation



David G. Benoit, MHP, RPh.
VP, Patient Care Services
Northeast Pharmacy
Service Corporation