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**To:** All Participating Pharmacies      **From:** Ron Lanton, Legislative Policy Advisor

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**Date:** May 3, 2022      **Pages** 1

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**RE: CMS Finalizes DIR Fee Proposal But More Changes Are Needed**

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The Centers for Medicare and Medicaid Services (CMS) has released its final rule on DIR fees impacting PBMs otherwise known as pharmacy benefit managers. The final rule can be found [here](#). The final rule takes effect January 2024.

**Here is what CMS changed about DIR fees:**

*“We are eliminating the exception for pharmacy price concessions that cannot reasonably be determined at the point of sale for all phases of the Part D benefit. We are also deleting the existing definition of “negotiated prices” at § 423.100 and adopting a new definition for the term “negotiated price” at § 423.100, which we define as the lowest amount a pharmacy could receive as reimbursement for a covered Part D drug under its contract with the Part D plan sponsor or the sponsor’s intermediary. We are also modifying the definition of negotiated price in the coverage gap at § 423.2305 to align with the new definition of negotiated price at § 423.100. Lastly, we are adding a definition of “price concession” at § 423.100.”*

**Here is CMS’s rationale about what the impact will be:**

*“Requiring pharmacy price concessions in the negotiated price is expected to reduce total beneficiary costs by \$26.5 billion between 2024 and 2032, or approximately 2 percent. In addition, the policy is estimated to have \$46.8 billion in Part D costs for the government between 2024 and 2032 due to increases in direct subsidy and low-income premium subsidy payments, which represents a 3 percent increase. Manufacturers will save about \$16.8 billion over the same period. We expect a one-time cost to plan sponsors of \$0.1 million to update systems and ongoing costs of \$0.1 million for added PDE transmission costs.”*

**Here’s what needs to be changed:**

The final rule does not prohibit the PBM from creating contract terms that allow for penalty payments after the point of sale, meaning that retroactive penalties can still technically occur.

NPSC is happy that CMS has taken a significant step in defining critical issues within DIR that have allowed PBMs to get away with making DIR murky and confusing. However, CMS’ interpretation of DIR still needs to be tightened. We will continue our advocacy to our legislators, the FTC as well as anyone else that we need to finally rid this economically damaging issue from pharmacy.