

March 4, 2010

Charlene Frizzera, Acting Administrator
Centers for Medicare and Medicaid Services
United States Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, D.C. 20201

Subject: Certain Medicare Part D Plans Circumventing Intent of Prompt Pay Law

Dear Acting Administrator Frizzera:

The National Community Pharmacists Association (NCPA) is writing to ask that the Center for Medicare and Medicaid Services (CMS) instruct Medicare Part D plans to halt what appears to be the improper and illegal imposition of extraneous fees and charges on Part D network pharmacies in response to the implementation of prompt pay provisions contained in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). These provisions became effective on January 1, 2010. NCPA represents the owners and operators of more than 22,700 independent community pharmacies dispensing 40 percent of the nation's retail prescriptions, including to millions of Medicare and Medicaid patients.

Section 171 of MIPPA requires Part D plans to pay pharmacies within 14 calendar days if they submit a clean prescription claim electronically to the Part D plan. Plans are also required to pay pharmacies by electronic funds transfer if they so request. Part D plans must pay community pharmacies in a timely manner so that they do not unfairly enrich themselves from the "float" they obtain by delaying payments to pharmacies.

Our members now have two months of experiences with how Part D plans are implementing these new requirements. Regrettably, NCPA members are informing us of cases where some Medicare Part D prescription drug plans appear to be trying to circumvent the intent of the prompt pay law by imposing new transaction fees and making it difficult for pharmacies to obtain reconciled payment within the deadlines required by law.

Plans are finding ways to charge new fees to pharmacies, seemingly as a means of financially recouping the loss from the "float" they enjoyed holding onto pharmacies' money for long periods. Examples of issues our members are having related to prompt payment of Medicare Part D claims include the following:

Failure to Send Necessary Remittances: Some central pay providers such as Pharmacy Service Administrative Organizations or PSAOs, are being paid ‘on time’ (i.e. plans are providing remittance checks to PSAOs in 14 days), but plans are not providing the 835 form for reconciliation purposes. As a result, the PSAO cannot provide the actual payment to the pharmacy until the remittance detail is received, usually a week later. Plans claim they are meeting their obligations by paying the PSAO on time, but the pharmacies cannot actually receive their monies within the statutory 14 day timeline.

Claims Reconciliation Issues: Payers are mixing payment for commercial prescription claims that are paid within 30 days, with payments for Medicare Part D prescription claims they are required to pay in 14 days. This is making claims reconciliation a far more difficult task for community pharmacists, particularly when coupled with the delays in receiving remittance detail as set forth above. For example, CVS Caremark combines both Part D and commercial claims in the same routine remittance advice form, and forces the pharmacist to single out the various Part D claims to effectively account for payments. Medco sends separate checks without a remittance attached, and then may send one remittance form with Part D and commercial claims mixed. Express Scripts is similar to CVS Caremark, forcing the pharmacist to know the group numbers of Medicare Part D patients compared to those for commercial claims to appropriately account for payments.

New Prescription Transaction Fees: Some plans are instituting new and unusual fees on each prescription, such as in network and out of network fees and post processing fees (up to 25 cents per claim as is the case with Humana). These new fees are in addition to the traditional claims adjudication fees, and can cause the pharmacy to lose money to dispense certain drugs.

Electronic Funds Transfer (EFT) Fees: Some plans are charging fees for EFT set up as well as for the actual payment transaction. These include, for example, a charge of 2 to 3 percent of the value for each transaction for amounts less than or equal to a pre-specified amount. For amounts greater than this pre-specified level, fees are capped at \$20 per transaction. This particular fee imposed by MedImpact is simply unconscionable, and is designed to discourage EFT so plans can hold onto the pharmacists’ money longer.

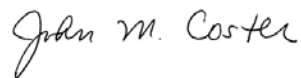
Failure to Notify of, or Honor, EFT Option: Some plans are not notifying pharmacies they have the option to obtain EFT. We also hear that some pharmacies are not being sent an EFT form when they request such from the plans. In addition, we have been told that both Emblem Health and Pharmacy Data Management, Inc. are not providing pharmacies with the EFT option.

Requiring Electronic Remittances for EFT: We have also seen correspondence in which Express Scripts states that it will not send paper remittances if payment is provided by EFT. MIPPA, however, states that when payment is made electronically remittance **may** be made by the PDP sponsor electronically as well. If a pharmacy submits a clean claim electronically and requests EFT, the PDP must honor that request, regardless of whether the remittance is provided electronically or by paper.

With respect to remedies, we do not believe that the “non interference” clause of the Medicare Modernization Act prohibits CMS from instructing plans to stop charging these fees or make the reconciliation process easier for community pharmacists. We believe that CMS should provide immediate additional guidance to Part D plans to indicate that these additional charges – which just so happened to appear when Part D plans lost their ability to “float” money that rightly belongs to pharmacies – are flatly illegal and against the spirit and intent of MIPPA.

All of these practices by some Medicare Part D prescription drug plans or entities they contract with unjustifiably harm pharmacies. They collectively serve to saddle pharmacies with administrative burdens at the expense of time that could otherwise be spent providing their Medicare beneficiaries and other patients with quality consultation and care. We would appreciate your prompt response to this letter. If you have any questions, please contact me at (703) 683-8200 or john.coster@ncpanet.org. Thank you for your attention to this matter.

Sincerely,



John M. Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs

Cc: The Honorable Max Baucus, Chairman, Senate Finance Committee
The Honorable Charles Grassley, Ranking Member, Senate Finance Committee
The Honorable Sander Levin, Chairman, Ways and Means Committee
The Honorable Dave Camp, Ranking Member, Ways and Means Committee
Jonathan Blum, Center for Medicare Management,
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