



# Congress Leery of CMS Medicaid Plan

By Bruce Roberts, RPh

The head of the House Small Business Committee has told the Centers for Medicare & Medicaid Services (CMS) that it has “insufficiently” followed a federal law that requires regulatory agencies to estimate the impact of proposed rules on small businesses. Rep. Nydia M. Velázquez (D-N.Y.) was referring, of course, to the proposed CMS rule on average manufacturers price (AMP) that as written could drive many small independent pharmacies out of Medicaid and even out of business.

“The initial regulatory flexibility analysis on the impact of the proposed rule is inadequate because CMS is analyzing the retail pharmacy industry as a whole and not examining the small business sector of the industry independently,” said Chairwoman Velazquez, a past recipient of our Legislative Defense Fund Equal Access Advocate Award.

She also told CMS that it hadn’t adequately evaluated alternatives to the proposed rule that would minimize the economic impact on small business pharmacies. “Options for reducing this impact include exempting small retail pharmacies from the reimbursement formula, creating a separate reimbursement formula for small retail pharmacies, or exempting pharmacies if their percentage of Medicaid business exceeds 10 percent,” she said. “Small retail pharmacies play a critical role in serving rural and inner-city communities—many of which are home to significant numbers of Medicaid recipients. CMS should use the discretion granted the Secretary [of HHS] in the DRA [Deficit Reduction Act] to publish a final rule that does not harm small retail pharmacies and the communities they serve.”

The letter from Velázquez is another sign of the growing bipartisan skepticism in Congress about the CMS proposal. Earlier letters written by Reps. Marion Berry (D-Ark.) and Jerry Moran (R-Kan.) and Sen. Max Baucus (D-Mont.), and signed by 74 members of Congress, also criticized the AMP reimbursement model. The House letter said the “proposed payment formula will be devastating to many community retail pharmacies, Medicaid beneficiaries, and

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the financing of the Medicaid program itself.”

NCPA and the NCPA-NACDS Coalition for Community Pharmacy Action played key roles in generating the letters.

All three letters cited the recent Government Accountability Office study that found that the proposed regulations would force pharmacists to accept Medicaid reimbursement for generic drugs that is, on average, 36 percent below their acquisition cost.

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That said, based on meetings with HHS, including Secretary Mike Leavitt, and CMS, we’re not optimistic about a favorable outcome through the regulation. So, we’re continuing to work with members of Congress on legislation that would accurately define AMP so that acquisition costs for generics are covered. We’re also working at the state level to increase dispensing fees so that the costs of doing—and staying in—business are covered. And yes, if worse comes to worse, we are considering appropriate legal remedies. **ap**

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