

June 5, 2019

Senator Lamar Alexander, Chairman
Senator Patty Murray, Ranking Member
United States Senate Committee on Health, Education, Labor and Pensions
Washington, D.C. 20510

*Re: Senate HELP Committee request for comments on the Lower Health Care Costs Act of 2019
Discussion Draft*

Chairman Alexander, Ranking Member Murray, and members of the Senate HELP Committee,

As the Committee considers common sense steps to take in delivering better health care outcomes and experiences at lower costs, the National Community Pharmacists Association (NCPA) appreciates the opportunity to provide our perspective and present solutions that could improve the health of all Americans in a cost-effective manner.

NCPA represents American's community pharmacists, including 22,000 independent community pharmacies. Almost half of all community pharmacies provide long-term care services and play a critical role in ensuring patients have immediate access to medications in both community and long-term care settings. Together, our members represent a \$76 billion healthcare marketplace, employ 250,000 individuals, and provide pharmacy services to millions of patients every day. Our members are small business owners who are among America's most accessible healthcare providers. NCPA submits these comments on behalf of both community and long-term care independent pharmacies.

The following are NCPA's comments on HELP's Discussion Draft:

Sec. 306. Health plan oversight of pharmacy benefit manager services.

1. PBM Reporting Requirements:

- NCPA is supportive of PBMs reporting the enumerated information to plans as a way to promote transparency.
- NCPA specifically supports disclosure of a mechanism of how a drug was dispensed. If possible, NCPA suggests that there should also be disclosure of profits from using one method of dispensing vs. another.
- NCPA suggests language for the disclosure of conflicts of interest, including a PBM's ownership interest of pharmacies, PBM, etc.

- This reporting requirement is necessary for plans to ensure no fraud is occurring. The state of Kentucky enacted a law in 2018 requiring disclosure of PBM data. That data showed the PBMs were using spread pricing to overcharge the state \$123.5 million. As a result of these reporting requirements, Kentucky's Attorney General is now investigating allegations that the PBMs overcharged the state. Without the reports, Kentucky would not realize there was cause for an investigation.
 - Sources: Kentucky Department for Medicaid Services, *Medicaid Pharmacy Pricing: Opening the Black Box* 5, 8 (Feb. 19, 2019), [https://chfs.ky.gov/agencies/ohda/Documents1/CHFS Medicaid Pharmacy Pricing.pdf](https://chfs.ky.gov/agencies/ohda/Documents1/CHFS_Medicaid_Pharmacy_Pricing.pdf). Kentucky Attorney General, *Beshear Launches Investigation into Inflated Prescription Drug Prices*, (Mar. 21, 2019), <https://kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=739>
- For reference, here is the info that must be disclosed in Kentucky (Ky. Rev. Stat. § 205.647.). NCPA supports adding this level of reporting in the current HELP discussion draft:
 - The total amount paid by the MCO to the PBM and the portion of that amount that was not subsequently paid to a pharmacy.
 - The average reimbursement by the PBM to a pharmacy that is owned by the PBM.
 - The average reimbursement by the PBM to a pharmacy with more than 10 locations.
 - The average reimbursement by the PBM to a pharmacy with 10 or fewer locations.
 - Any direct or indirect fees imposed by the PBM on a pharmacy that is owned by the PBM.
 - Any direct or indirect fees imposed by the PBM on a pharmacy with more than 10 locations.
 - Any direct or indirect fees imposed by the PBM on a pharmacy with 10 or fewer locations.
 - Ownership interests in an MCO, PSAO, or wholesaler.
- Reporting requirements are necessary to allow plans to ensure they are complying with legal and contractual requirements. For example, a plan may be required to report "medical loss ratio." CMS has recently pointed out that there is concern that plans "are not accurately reporting pharmacy benefit spread pricing when they calculate and report MLRs."
 - Source: <https://www.cms.gov/newsroom/press-releases/cms-issues-new-guidance-addressing-spread-pricing-medicaid-ensures-pharmacy-benefit-managers-are-not>

2. Limits on Spread Pricing

- The language excludes any penalties paid by pharmacies to the plans or PBMs from being included in calculating what a PBM collects from a plan or reimburses a pharmacy. Namely, these are pharmacy DIR fees in our opinion. Pharmacy DIR fees are used by PBMs to recoup reimbursement from pharmacies for the prescription medications they fill for Medicare beneficiaries. This exception essentially negates the intent of this provision. NCPA requests this exclusion be removed.
- Related, NCPA seeks clarifications as to what are considered “pharmacy penalties.” Are these pharmacy price concessions, i.e. pharmacy DIR, but in utilized in the commercial space? In other words, is a “penalty” a Generic Effective Rate (GER), Brand Effective Rate (BER), and/or Dispensing Fee Effective Rate (DFER)? If so, these “DIRs” will still be assessed retroactively and create a “spread” of sorts for PBMs.
- Further, NCPA questions whether pharmacy penalties need to be defined. In the alternative, NCPA suggests citing the prompt pay statute to set guardrails around what are “penalties” and how/when they should be paid out.
- NCPA requests language that would also state the reverse in the discussion draft: i.e., a pharmacy could also not be paid less for dispensing a drug than a plan paid for a drug. States that have recently made such a change include Louisiana and New York, which both passed laws prohibiting spread in Medicaid managed care.
- P. 105 Lines 15-16 is missing a reference to PBMs.
- Limiting spread pricing is necessary to protect patients and payors. Thus, this policy contemplated in the discussion draft echo’s CMS Administrator Verma’s concern that “spread pricing is inflating prescription drug costs that are borne by beneficiaries and by taxpayers.”
 - Source: <https://www.cms.gov/newsroom/press-releases/cms-issues-new-guidance-addressing-spread-pricing-medicaid-ensures-pharmacy-benefit-managers-are-not>

3. Further Limitations on Pricing for Insurance

- NCPA supports this provision as it gets at the heart of the conflict of interest in these relationships.
- NCPA urges caution that this section NOT be used to set a ceiling on how much pharmacies not connected with PBMs/plans would get paid.

4. Full Rebate Pass-through to Plan

- NCPA supports with the following caveats:
 - Pharmacy DIR reform must occur before any full rebate pass through to plan occurs. If not, there is significant threat that PBMs will use pharmacy DIR to make up any lost revenue from this requirement. Pharmacy DIR reform must occur and will lead to lower beneficiary out of pocket costs.

- Are pharmacies considered other third parties? This could be an opportunity to do pass through of pharmacy DIR.

Pharmacy Quality Language

- NCPA is supportive of Senator Cassidy’s language to require the HHS secretary to standardize quality metrics in commercial plans with input from industry stakeholders. NCPA is aware, however, that quality and performance programs are more prevalent in Medicare Part D. In contrast, “DIR” in the commercial space is largely based on “effective rates,” including Generic Effective Rate, Brand Effective Rate, and Dispensing Fee Effective Rate. Still, NCPA supports standardizing quality and performance metrics in the commercial space in the hopes to influence the Part D space.

Conclusion

NCPA shares in many of the policy goals set forth by the Senate HELP Committee discussion draft and is committed to working with the staff and members of the Committee in its bipartisan efforts to reduce health care costs. We look forward to additional collaborative efforts between community pharmacies and other health care providers to improve the quality of care for all patients while reducing health care costs. Please contact me with further questions at karry.laviolette@ncpanet.org or 703-600-1180.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karry La Violette", followed by a horizontal line.

Karry La Violette
Sr. VP, Government Affairs
National Community Pharmacists Association