September 8, 2009

The Honorable Kathleen Sebelius
Secretary, U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Subject: Impact of First DataBank Settlement on Medicaid Patients' Access to Pharmacy Services

Dear Secretary Sebelius:

We are writing to ask for your help in assuring that community pharmacies can continue to serve Medicaid patients after September 26, 2009. We are concerned that many state Medicaid programs are not acting to make changes to their pharmacy reimbursement rates to compensate for a change in the way that the pharmacy reimbursement benchmark (commonly known as "average wholesale price", "AWP") is being calculated and reported. This AWP benchmark is the one which is most frequently used by state Medicaid programs to reimburse pharmacies for most single source drugs and some multiple source drugs.

As recently reported, a U.S. District Court approved the First DataBank/Medi-Span Settlements—a decision that will result in significant cuts to the pharmacy reimbursement rates in all states that base their reimbursement methodology on Average Wholesale Price (AWP). The terms of the First DataBank/Medi-Span Settlements require First DataBank to reduce the AWP from 125% of the Wholesale Acquisition Cost (WAC) for the majority of the affected products to 120% of the WAC for 1,442 drug products. This AWP reduction is scheduled to begin on September 26, 2009. In addition, First DataBank/Medi-Span have announced that they will reduce the AWPs for an additional 20,000 distinct prescription products and cease publishing AWP within two years.

AWP Rollback Could Reduce Patients Access to Pharmacies: These changes to AWP will reduce Medicaid reimbursement to pharmacies by about 4 percent which translates to a conservatively-estimated loss of more than $350 million each year in Medicaid payments to community pharmacies. These reductions may force many pharmacies to close, reduce hours, or stop providing Medicaid pharmacy services.

Pharmacies only earn 2 percent net profit margin, and this reduction of at least 4 percent in Medicaid payments for brand name pharmaceuticals – over 80 percent of the typical pharmacy's Medicaid sales - will sharply reduce the average pharmacy margin. It will have a much greater financial impact for pharmacies that fill a high percentage of Medicaid prescriptions, especially those located in urban and rural areas. The AWP rollback will reduce the state pharmacy reimbursement rates to such a degree that many pharmacies may not be able to continue to provide services to the Medicaid population.

States Must Actively Determine "EAC" for Brand Name Drugs: All states have certified to CMS that their current reimbursement rates for brand name drugs reflect the State's best estimate of pharmacies' actual acquisition costs. See 42 C.F.R. 447.502, 447.512, 447.518. If state's do not adjust their reimbursement rates when AWPs are reduced, then they will no longer be in compliance with these regulatory requirements, because reimbursement will be artificially reduced by about 4% below the states' best estimate of pharmacies' actual acquisition costs. A state should not be authorized to passively acquiesce to the questionable reductions in the payment benchmark.

Reimbursement Must be Consistent with Access Standards: In addition, under 42 U.S.C. 1396, an agency's payments "must be sufficient enough to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services under the plan are available to the general population." We believe that if the states do not take prompt remedial action to ameliorate the inequitable effects of the settlement, there may be a significant disparity in the access of Medicaid recipients to pharmacy providers and needed medications in contrast to other state residents. In turn, this could lead to an increased need for other health care services at significant cost to the states, such as hospitalizations and emergency room visits.

A state that fails to make comparable adjustments in the benchmark for payment violates one of the basic tenets of the Medicaid Act – that Medicaid patients have access to services consistent with those of the general population.

In order to ensure that the healthcare services offered under the Medicaid program are equivalent in terms of access and quality to those available under private payors, it is essential that state Medicaid programs adjust the pharmacy reimbursement rates to maintain current payment levels.

We strongly urge you to please act now to instruct states to modify their Medicaid pharmacy reimbursement rates such that access to pharmacy services can be maintained. If you have any questions about this letter or would like to discuss this issue in greater detail, please contact the individuals listed below. Thank you.

Sincerely,

Bruce Roberts, R.Ph.
Executive Vice President
National Community Pharmacists Association

Becky Snead, R.Ph.
Executive Vice President
National Association of State Pharmacy Association Executives

Steve Anderson, IOM, CAE
President and CEO
National Association of Chain Drug Stores

cc: The Honorable Max Baucus, Chairman, US Senate Committee on Finance
The Honorable Charles Grassley, Ranking Member, US Senate Committee on Finance
The Honorable Henry Waxman, Chairman, US House of Representatives, Committee on Energy and Commerce
The Honorable Joe Barton, Ranking Member, US House of Representatives, Committee on Energy and Commerce