

CMS Bows to PBM and Insurer Pressure With Final Part D Rule, Punting on Fixing DIR Fees

Statement by COA Executive Director Ted Okon on CMS' Final Rule stalling its soft-ball attempt to address PBM pharmacy fees

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COA calls on the Congress and Federal Trade Commission to act immediately to stop the abuses that PBMs are inflicting upon our country. It's clear that CMS is not up to the task!”

Ted Okon, COA

Alliance (COA) warned the Centers for Medicare & Medicaid Services (CMS) that the proposed policies in the CY 2023 Medicare Advantage and Part D Proposed Rule to limit the abuses of PBMs did not go far enough. Unfortunately, in the Final Rule just published, CMS has completely failed to meaningfully address PBM so-called “direct and indirect remuneration fees” (DIR fees) assessed on pharmacy providers, including retail pharmacies and specialty pharmacies/dispensing facilities associated with oncology, urology, and other medical practices. CMS has once again failed to act as PBMs extract DIR fees increased a staggering 107,400 percent from 2010 to 2020.

Meanwhile, the prices patients pay for their medications remain [artificially high](#) and pharmacy providers struggle to stay in business, with many already closing their doors, leaving millions of Americans in “pharmacy deserts” where patients have limited or no access to their medications.

CMS has not addressed PBM DIR fees for years despite clearly having the authority to do so – as COA pointed out in its [March 7, 2022, comment letter](#) to the agency. In both its original comment letter on the proposed rule to CMS, and [a follow-up letter to the agency](#), COA detailed the specific statutory and regulatory authority that the agency has to make meaningful changes to DIR fees. CMS addressed virtually none of this in the Final Rule, and America's patients and pharmacies will be left to pay the price. Even the tepid action CMS says it will take, will not go into effect for more than a year and a half.

COA predicted that PBMs would replace DIR fees by further dropping reimbursement for pharmacy providers below drug acquisition cost or simply creating additional fees unless CMS acted. True to form, even before CMS published its Final Rule, the nation's second-largest PBM, Express Scripts (a division of health insurer Cigna) amended its Medicare Part D network

agreement to do exactly that – low ball reimbursement to pharmacy providers and create new fees in place of destructive DIR fees. And the largest PBM, CVS Caremark (a division of CVS Health that owns the health insurer Aetna), just released a new network agreement that warned it will lower pharmacy reimbursement if CMS makes any changes to Medicare Part D. Unlike the inaccurate statements by CMS that there are “negotiations” between PBMs and pharmacists, these new PBM agreements clearly show the opposite – it’s “take it or leave it.”

Unfortunately, as the top PBMs and health insurers have consolidated into a powerful oligopoly, CMS is now at the mercy of threats by the PBM/insurer complex that premiums will increase if the fees PBMs assess on pharmacies are placed in danger. The message is clear: The PBMs and insurers will get their pound of flesh one way or another. With CMS yet again failing to act, Americans will be left to pay more for their medications, patients with cancer and other serious diseases will have to fight through delays and denials, and independent pharmacy providers will continue to suffer.

COA calls on the Congress and Federal Trade Commission to act immediately to stop the abuses that PBMs are inflicting upon our country. It’s clear that CMS is not up to the task!

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About the Community Oncology Alliance: COA is a non-profit organization dedicated to advocating for community oncology practices and, most importantly, the patients they serve. COA is the only organization dedicated solely to community oncology where the majority of Americans with cancer are treated. The mission of COA is to ensure that patients with cancer receive quality, affordable, and accessible cancer care in their own communities. More than 5,000 people in the United States are diagnosed with cancer every day and deaths from the disease have been steadily declining due to earlier detection, diagnosis, and treatment. Learn more at www.CommunityOncology.org. Follow COA on Twitter at www.twitter.com/oncologyCOA or on Facebook at www.facebook.com/CommunityOncologyAlliance.

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