

RON WYDEN, OREGON , CHAIRMAN

DEBBIE STABENOW, MICHIGAN
MARIA CANTWELL, WASHINGTON
ROBERT MENENDEZ, NEW JERSEY
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
SHERRON BROWN, OHIO
MICHAEL F. BENNET, COLORADO
ROBERT P. CASEY, Jr., PENNSYLVANIA
MARK R. WARNER, VIRGINIA
SHELDON WHITEHOUSE, RHODE ISLAND
MAGGIE HASSAN, NEW HAMPSHIRE
CATHERINE CORTEZ MASTO, NEVADA
ELIZABETH WARREN, MASSACHUSETTS

MIKE CRAPO, IDAHO
CHUCK GRASSLEY, IOWA
JOHN CORNYN, TEXAS
JOHN THUNE, SOUTH DAKOTA
RICHARD BURR, NORTH CAROLINA
ROB PORTMAN, OHIO
PATRICK J. TOOMEY, PENNSYLVANIA
TIM SCOTT, SOUTH CAROLINA
BILL CASSIDY, LOUISIANA
JAMES LANKFORD, OKLAHOMA
STEVE DAINES, MONTANA
TODD YOUNG, INDIANA
BEN SASSE, NEBRASKA
JOHN BARRASSO, WYOMING

JOSHUA SHEINKMAN, STAFF DIRECTOR
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 7, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

I write to urge the Centers for Medicare and Medicaid Services (CMS) to finalize the proposal to apply all pharmacy price concessions to drug prices at the point of sale under Part D included in the proposed rule *Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Program*.

I appreciate CMS acting on my request last October for this proposed rule to be issued. As I have written to you, Bi-Mart, a regional chain of retail stores offering pharmacy services in the Northwest, closed 56 pharmacies across Oregon, Idaho, and Washington, citing “increasing costs and ongoing reimbursement pressure.” Thirty-seven of these closures were in Oregon. Direct and indirect remuneration (DIR) fees, or pharmacy price concessions, feature prominently among the drivers of these closures. These fees allow pharmacy benefit managers (PBMs) to claw back what they pay pharmacies on prescriptions filled by Part D beneficiaries. Often, the amount clawed back is based on a pharmacy’s performance on quality metrics defined by the PBM, and include measures of which pharmacies have minimal control, such as patient adherence to treatment. Pharmacies usually are unaware of how much will be clawed back by the PBM after payment on a prescription has already been made. As a consequence, pharmacies fill many prescriptions at a loss.

The resulting financial uncertainty is particularly problematic for small and independent pharmacies such as Bi-Mart’s. Across the country, 2,200 pharmacies between December 2017 and December 2020, often in rural and underserved areas. Closures in these areas have negative consequences for the most vulnerable. Our rural communities depend on local community pharmacists for their care. In many cases these pharmacies are the only readily accessible provider of COVID-19 vaccines and testing. They not only provide access to medication in these

communities, they also play an essential role in the delivery of other critical services, such as patient education, management of chronic disease, and preventative care.

In its proposed rule, CMS states that pharmacy DIR fees grew more than 107,400 percent between 2010 and 2020. These fees do nothing to lower the amount Medicare beneficiaries must pay for their drugs each time they fill a prescription and seemingly serve only to pad plan and PBM profits. The meteoric rise of these fees, coupled with the lack of transparency in their application to pharmacy reimbursement, is not only resulting in the closure of hundreds of pharmacies in communities across the country, but it is also contributing to increasing prescription drug costs for patients. Pharmacy DIR fees applied after the point of sale artificially inflate patients' out-of-pocket costs for Part D drugs, and as CMS estimated in its proposed rule, requiring these fees be applied at the point of sale will reduce seniors' out-of-pocket prescription drug costs by \$21.3 billion over 10 years.

CMS must take the next step in finalizing the proposal to move all pharmacy DIR to the point of sale in a reasonably expedient manner and without any compromises. Doing so will meaningfully ease the financial strain on thousands of independent pharmacies and millions of Medicare beneficiaries across the nation. By constraining these out of control fees and requiring additional transparency, this action will help communities that count on these pharmacies for access to medicine and quality local service.

In addition to finalizing this proposal, I also again strongly urge CMS to conduct a formal review of pharmacy closures in the US in the last five years. These reviews should examine Part D plan and PBM payment practices to pharmacies, like pharmacy DIR fees, the exact nature and impact of those practices in terms of pharmacy reimbursement under Medicare, including how pharmacy reimbursement under Part D compares to pharmacy acquisition costs, and how pharmacy closures in this time frame affected equitable access to pharmacy services for Medicare beneficiaries. DIR fees are but one way middlemen squeeze pharmacies and limit competition. More must be done to ensure a healthy, competitive pharmacy industry that produces better and more equitable outcomes while reducing costs for Medicare beneficiaries.

Sincerely,



Ron Wyden
Chairman
Committee on Finance