CMS Proposals Would Raise Part D Premiums and Risk Its Success

In its latest Notice of Proposed Rulemaking for Medicare Part D and accompanying request for information (RFI), CMS proposes changes that would significantly increase beneficiary premiums and taxpayer costs and compromise popular preferred pharmacy network plans. Specifically, in the RFI CMS suggests requiring plans to pass through to beneficiaries at the point of sale (POS) some or all of negotiated drug rebates and pharmacy incentive payments, termed direct and indirect remuneration (DIR), which are now used to reduce premiums and overall cost-sharing. In addition, in the proposed rule, the agency proposes virtually ending competition among pharmacies in Part D, which will increase costs and hurt quality.

Problems with Mandating Pass-Through of Manufacturer Rebates at Point of Sale. Currently, plans have the option to apply rebates at the POS, or to lower beneficiary premiums, or apply them in other ways to benefit enrollees.

POS Rebates Would Increase Costs for Medicare Beneficiaries and Taxpayers. CMS itself says that passing through all manufacturer rebates to beneficiaries at POS would increase premiums by 11 percent. A small minority of beneficiaries, perhaps ten percent, would see savings. According to CMS, requiring 100% of rebates to be passed through at POS would, over the next 10 years, increase beneficiary premiums by $28.3 billion and costs to taxpayers by $82.1 billion, largely through the premiums the government pays for lower income individuals.

POS Rebates Would Provide a Windfall to Drug Manufacturers. If the CMS proposal were finalized, drug manufacturers would not have to pay $29.4 billion, according to CMS, in discounts they would have otherwise paid from the 50 percent Coverage Gap Discount.[i]

POS Rebates Are not Viable in Medicare Part D. POS rebates are currently permitted in Part D, but virtually no plans offer them. Under the RFI proposal, plans known to have the best rebates on drugs for serious conditions would attract sicker members, and the program's risk distribution would become unstable. As a result, rebates could be lowered or not offered at all; plans become unviable and exit the market; premiums rise, discouraging the healthy from signing up. In any scenario, costs increase and the program is destabilized.

MedPAC Recommends Against Implementing Mandatory POS Rebates. In its comments to the Agency on the RFI and proposed rule, MedPAC says of requiring POS rebates, "…we are concerned that CMS's proposed approach would be complex to implement, administratively burdensome and, for drug classes with few competing therapies, would risk disclosure of confidential rebate information. Further, the policy would not help beneficiaries who take expensive drugs with no post-sale rebates or discounts. We strongly encourage CMS to search for alternative policies…."[ii]

Problems with Any Willing Pharmacy Changes and Mandating Pharmacy Incentive Payments (Pharmacy DIR) at Point of Sale. In addition to the RFI's concept of passing through all pharmacy incentive payments at POS, the proposed rule includes other pharmacy policies, such as unwaivable standard terms and conditions across all pharmacies.

CMS's pharmacy proposals would destroy pharmacy price competition, likely increasing costs. If all pharmacies must be paid the same (for example, as the most rural

pharmacy needed to meet network adequacy requirements), this will end competition among them and likely increase costs.

The CMS Pharmacy Proposals Are Particularly Incompatible with Specialty Pharmacy. The CMS proposal to require no-exception standard terms and conditions presents even greater problems for forming a network of qualified specialty pharmacies. It would limit plans' ability to distinguish retail pharmacies from specialty pharmacies, which typically serve patients with complex and rare conditions, in their networks. Retail pharmacies are not generally equipped to deliver the highly specialized clinical management and other services that specialty drug products and these patients require. If plans cannot select the most qualified, accredited specialty pharmacies, patient care would be compromised.

Mandatory Pharmacy Incentive Payments At The Point Of Sale Could End Part D Pharmacy Networks. Many plans use these savings, calculated after compiling data on pharmacy performance, for preferred pharmacy cost-sharing, with the savings also reflected in premium. CMS says POS pharmacy DIR would increase beneficiary premiums by 2 percent. If plans must use these funds at point of sale, there is less possibility to establish preferred cost-sharing. In 2017, 73 percent of seniors chose to enroll in Prescription Drug Plans (PDPs) with preferred pharmacy networks, and in 2018, 99 percent of regional PDPs feature preferred cost sharing pharmacy networks.[iii] The CMS proposals risk taking this popular choice away from Part D enrollees.

CMS Pharmacy Proposals Disrupt Pay for Performance. Plans negotiate DIR with pharmacies to reflect how they performed on contractually agreed-upon measures such as generic substitution rates, adherence rates, and the like. CMS proposals to require uniform, unwaivable terms and conditions taken together with the mandatory POS DIR approach would end plans' abilities to negotiate pay for performance based on individual pharmacy capabilities. This would impede efforts to improve quality of care and services.

The Range of Rebate and Pharmacy Contracting Proposals Violates Part D Noninterference. Barring the government from intervening in negotiations between Part D plans, manufacturers and pharmacies, the noninterference clause is central to the Part D architecture establishing private plan competition, which has produced high enrollee satisfaction and the program consistently running below projections for over a decade. CMS's proposals in dictating drug rebate requirements, pharmacy contracting terms, and a range of other polices violates noninterference(as well as other MMA provisions) and risks Part D's success.

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[i] CMS, "Medicare Program: Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program," Federal Register, November 28, 2017.

[ii] MedPAC, http://www.medpac.gov/docs/default-source/comment-letters/01032018_partc_d_comment_v2_sec.pdf?sfvrsn=0

[iii] See, http://www.drugchannels.net/2017/01/new-2017-part-d-enrollment-data.html, http://www.drugchannels.net/2017/10/exclusive-preferred-pharmacy-networks.html