

## What CMS' Proposed DIR Rule Does and Doesn't Do

by NCPA | Dec 19, 2018

CMS' proposed drug pricing rule released two weeks ago embraces several innovative ideas, some of them controversial – for instance, changes to protected classes of medications and expansion of step therapy as a cost-saving tool. Of singular interest to NCPA, though, are provisions that would eliminate the retroactive application of pharmacy DIR fees.

### What the rule does:

- Changes the definition of negotiated price concession to force PBMs to **include all pharmacy price concessions (aka pharmacy DIR) at the point of sale.**
- **Redefines the term "price concessions" to embody only types of pharmacy DIR** that a pharmacy would encounter in a PBM contract.
- Excludes pharmacy incentive payments from being included in the negotiated price at the point of sale. This **incentivizes plans/PBMs to pay out only positive performance-based payments** to pharmacies.
- Requires that "pharmacy administrative service fees," such as "network access fees, administrative fees, technical fees, and service fees," that the PBM does not classify as pharmacy DIR not be charged to pharmacies.

### What the rule *doesn't* do:

- Doesn't eliminate DIR fees altogether – but it's a step toward elimination, and CMS is open to further discussion on complete elimination, a point NCPA continues to press. *Meanwhile, more than 96 percent of NCPA members tell NCPA that ending retroactive fees is their top priority.* Much like S. 413 / H.R. 1038, the federal legislation supported by NCPA, this proposed rule would bring predictability to pharmacy owners' cash flow. (Bear in mind, a "mystery" rule related to rebates still awaits action by the Office of Management and Budget. That rule contemplates overhauling the rebate system, and may address DIR. At this point, no one knows exactly what's in that rule.)
- Doesn't increase or decrease payments to pharmacies. That's a point that CMS officials made clearly on a pharmacy stakeholder call Dec. 7. Instead, the proposal would change the way that plans report data to CMS. In the proposed rule, CMS indicates that under the current pharmacy DIR process, most pharmacies are already being assessed the lowest possible reimbursement, albeit months after a transaction. This proposed change simply redefines the negotiated price to reflect that reality, so pharmacies know their baseline reimbursement up front. This change would also move the pharmacy's point-of-sale reimbursement closer to the actual cost of the drug for the Part D sponsor.
- Doesn't allow PBMs to claw back fees, period. CMS has clarified that only positive incentive payments to pharmacies can occur after the point of sale.

**NCPA is pulling out the stops to urge our members, patient groups, and other partners to send CMS comments in support of those provisions, and we've made it easy for you to [do that here](#).** In addition, [we've provided a resources page](#) with tools to help you learn more about – and urge others to comment on – the rule.

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