Dear PCAs and HCCNs:

As you know, drug manufacturer Merck has requested every that health center (and other 340B provider) submit data to them every two weeks about every 340B-priced Merck drug dispensed via a contract pharmacy, and has set August 14 as the deadline for FQHCs to register on their data collection platform. Drug manufacturer Sanofi has made a similar request, although with a later deadline.

Please note that ***for legal reasons, NACHC cannot recommend how health centers should respond to these requests***. However, to assist health centers in evaluating their options, I am attaching two documents:

1. A memo from NACHC's Legal Counsel, Feldesman Tucker, entitled "Your Rights and Obligation in Response to Merck and Sanofi Demands for 340B Contract Pharmacy Claims Data." Among other points, the memo states that "The manufacturers have no right to the data requested, and 340B program covered entities have no obligation" to share the requested data."

2. A letter dated 8/7 from NACHC to Merck stating:
    a. Regarding duplicate discounts on Medicaid drugs, health centers are very willing to make "good faith efforts" to collaborate with manufacturers to avoid duplicate discounts. However, Merck's request far exceeds a "good faith effort."

    b. Regarding data on drugs dispensed to Medicare and commercially-insured patients, health centers are unwilling to provide the data because it will lead to an expansion of discriminatory contracting, undermining their ability to retain 340B savings and the services they support.

    c. NACHC requests to meet with Merck to discuss ways to achieve their goals without placing an undue burden on health centers or causing health centers to lose the benefit of 340B savings.

We hope that this information is helpful in deciding how to respond to Merck and Sanofi. If you have any questions, please contact Colleen Meiman at cmeiman@nachc.org.

Lastly, the Merck and Sanofi actions come around the same time as the Administration's July 24, 2020, issuance of the Executive Order (EO) impacting our memberships' patients. Within a few days you will receive a toolkit with 1) information that we hope will help answer questions about the EO and the Merck, Sanofi, and Eli Lilly actions, 2) a draft press release, and 3) a draft letter to your lawmakers. Colleen has been working on this for quite some time, but the 340B-related events have been rapid and complex. The delay is on me – thank you all for your patience.

Thank you for all you do,
Steve

Steve Carey
Chief Strategy Officer
National Association of Community Health Centers