June 1, 2017

Ms. Amanda Johnson
Centers for Medicare & Medicaid Services
7500 Security Boulevard C1-13-07
Baltimore, Maryland 21244

Subject: Proposed Medicare Part D DIR Reporting Requirements for 2016

Dear Ms. Johnson:

I write as the Secretary of the New York City Pharmacists Society (NYCPS) on behalf of our nearly 800 members. I am writing in response to the release by the Centers for Medicare and Medicaid Services ("CMS") of the "Proposed Medicare Part D Direct and Indirect Remuneration ("DIR") Reporting Requirements for 2016" dated May 17, 2017. As NYCPS has hundreds of independent community pharmacists among our membership, we wish to express our concern over the hidden Part D charge backs which are seriously affecting our pharmacist members financial bottom line because these charges are not able to be viewed in a real time on line transaction and because months later when these charges are applied by the various pharmacy health insurers, the pharmacist discover that they are at times deeply under water on specific prescriptions dispensed to Part D patients.

We believe that the real purpose of these DIR charges is not a legitimate one at all, and these charges are intended to circumvent the congressional intent when this legislation was put into law in the Medicare Modernization Act of 2003. The only value of these DIR charges is for the Pharmacy Benefit Managers ("PBMs") and the various Medicare Part D Prescription Drug Plans ("PDPs") to gain untracked extra profit. Congress never intended to give PBMs and the PDPs the ability to accumulate millions of dollars in hidden profits on the backs of the pharmacies (and at the expense of the Medicare Part D program). The pharmacists owned independent pharmacies have always put their patients first, and have exhibited their dedication to patient outcomes, since the beginning of the Medicare Part D program and even before the start of the Part D program, by serving our nations senior citizens and other qualified disabled patients. To allow the PDPs and PBMs to bypass the fundamental structure of the TrOOP, which is intended to track the expenses that count toward a person's Medicare drug plan out-of-pocket threshold is an abuse of the safeguards intended to protect the integrity of the Part D prescription benefit is costing millions of dollars annually, (on the backs of the pharmacists and pharmacies of this nation) and is unfair to the senior citizens and others enrolled in the Part D program.

Back in February 2013, I had written to your agency in response to the 2014 proposed Medicare Call Letter. In that submission, besides other issues of concern, I focused on the emerging practice of a back-end charge months after the instant adjudication of the prescription clam at the time of dispensing. Since the PDPs and PBMs have be able to perfect this post adjudication recapture

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process, which we can view these DIR charges like a run-away train, as it seems out of the grasp of CMS because the very nature of the calculation by the PDPs must of the total value of each of the Medicare Part D patient's Prescription Drug Events ("PDEs") cannot account for such delayed DIR charges. Since the PDE are tracked and tallied up at the end of each calendar year without the inclusion of the DIR fees, your agency never has a accurate picture of the true cost of the Part D program.

We, as the leadership of NYCPS, respectfully ask that CMS draft language which will force the PDPs to revise the method of managing these charge backs months after the prescription has been dispensed which have now been officially been known as and identified as DIR charges. We request that CMS force the PDPs to limit their tracking of such to instances to mandate that they take place in a real-time event as the patient's medication is being adjudicated.

A review of my specific language in the February 2013 letter stated:
"CMS was right on target when it says that some of these networks require pharmacy "pay to play" in these networks. Where do these reverse pharmacy payments to the plans go?

My February 2013 letter continued and the identification as DIR charges was not yet used as a acronym nevertheless such DIR charge back ability was here back in 2013 for the PDPs and PBMs to use. My February 2013 Letter went on:

"Post Point of Sale Per Claim Administrative Fees: NYCPS members wholeheartedly support the elimination of any per claim fee deduction by Part D Plans or their intermediaries upon pharmacy participants for the 2014 Calendar Year. As we saw with the introduction of a new Part D plan for 2013, Smart D Rx, it offered such an outrageous pharmacy-generated recovery/rebate in their funding, which we believe was not the intent of CMS nor Congress. We hope that such PDP/PBM methods to extract such back door financing for these plan operators is strictly prohibited."

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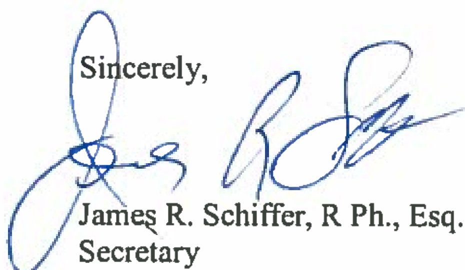
Now some four years after my February 2013 letter, DIR fees are growing exponentially. Some of the PDPs are requiring a DIR charge back of a flat rate (for example certain PDPs have required a $5 per brand name pharmaceutical dispensed) or equal to a specific percentage of the drug costs (and at times such charge backs are equal to the actual full drug reimbursement) - - calculated six to nine months after the prescription was dispensed.

In closing, our membership is suffering serious economic harm in the ongoing DIR charges. We implore CMS to put an end to the DIR hidden charge backs and if such DIR charges must continue please force the PDPs to process such charges as a current live component of the dispensing process in the Medicare Part D program. Thank you.

Sincerely,



James R. Schiffer, R Ph., Esq.
Secretary