

## DIR Fees' Impact on Small Business Community Pharmacies

In the very first Medicare Part D Final Rule in 2005, CMS' Small Business Analysis (required by the Regulatory Flexibility Act) estimated that the impact of the Part D program and accompanying regulations "generally will be positive"<sup>1</sup> on the overall retail pharmacy industry, including small pharmacies. Specifically, CMS estimated that "retail pharmacy revenues would experience a net increase ranging from 0.5 percent to 1.6 percent, as a result of the Medicare prescription drug benefit."<sup>2</sup> Fifteen years after implementation of the Part D program, small business community pharmacies are not experiencing these increases, due to the levy of direct and indirect remuneration (DIR) fees against small business community pharmacies in the Part D program.

Earlier this year, NCPA acquired estimations that conflict with CMS' expectation for community pharmacies in 2005. Today, DIR fees impact about 1.5-3.5% of total revenue of a community pharmacy.<sup>3</sup> More narrowly, in 2018, DIR fees impact about 3-5% of Part D prescription revenue of a community pharmacy.<sup>4</sup> These numbers demonstrate that the Part D program has not been "generally positive" for small business community pharmacies.

Amongst the many concerns with pharmacy DIR fees, pharmacy owners say the retroactive, arbitrary, and unpredictable nature of these fees lead to a pharmacy's inability to manage the business operations of their pharmacy. Specifically, pharmacy owners often find that the reimbursement they receive is less than the pharmacy's costs (drug acquisition plus cost to dispense).<sup>5</sup>

Moving forward, community pharmacies will see an increase in these fees for plan year 2019. It is for this reason, NCPA urges policymakers to take immediate action and eliminate retroactive pharmacy DIR fees. Doing so will save seniors almost \$200 per year on prescription drug costs and prolong the operation of small business community pharmacies that provide much-needed services to underserved populations and communities.<sup>6</sup>

---

<sup>1</sup> 70 Fed. Reg. 18, 4498 (Jan. 28, 2005).

<sup>2</sup> *Id.* at 4499. CMS also stated that HHS considers a significant economic impact on a substantial number of small entities when there is a change in revenues of more than 3% to 5%. It stands to argue that DIR fees impact today's community pharmacies at or above that threshold.

<sup>3</sup> NCPA Executive Update, *Taxes: Yes, they're inevitable, but why not pay less and take home more?*, May 4, 2018, available at <https://www.ncpanet.org/newsroom/ncpa-executive-update/2018/05/04/taxes-yes-they're-inevitable-but-why-not-pay-less-and-take-home-more-ncpa-executive-update-may-4-2018>. These estimates were derived from accounting organizations that provide accounting services to community pharmacies.

<sup>4</sup> These estimates were derived from certain contracting entities that provide contracting services to community pharmacies.

<sup>5</sup> NCPA, *Report for Survey of DIR Fees Imposed on Pharmacies*, Dec. 2017, available at <http://phrma-docs.phrma.org/files/dmfile/Report---Part-D-Beneficiary-Cost-Relief---FINAL.pdf>.

<sup>6</sup> 82 Fed. Reg. 56336, 56428 (proposed Nov. 28, 2017).