RebateRule101

CVSHealth

What Payors Need to Know

On January 31, the Department of Health and Human Services, Office of the Inspector General (HHS OIG), released a proposed rule to eliminate a safe harbor that applies to rebates on prescription drugs paid by manufacturers to pharmacy benefit managers (PBMs) for Medicare Part D plans and Medicaid managed care organizations (MCOs).

It would eliminate PBMs ability to negotiate any rebates, other than discounts at the point-of-sale (POS), from manufacturers on behalf of Part D plans and MCOs. If finalized, the current safe harbor protection for rebates for Medicare Part D plans and Medicaid MCOs would end on January 1, 2020. However, the Trump administration has clearly stated they hope the commercial market will ultimately follow the same rules and have asked Congress to pass legislation to that effect. This means that eventually the proposed HHS rule, if finalized, could have an effect beyond Medicare and Medicaid. We support the administration's goal to reduce costs and will work with them and the Congress to lower drug prices and reduce out-of-pocket costs for consumers.

Unfortunately, the proposed rule will take us backward not forward, leading to higher net drug prices and premiums, and increased costs for most beneficiaries and the government.

At CVS Health, we believe the high price of prescription drugs is among the most pressing health care issues facing Americans today. We are committed to finding the right drug at the lowest possible cost for patients to ensure they are able to access and stay on the medications they need. As a PBM, CVS Caremark is focused on developing strategies that help lower costs for clients and their plan members, and negotiating for greater discounts from manufacturers on their behalf. In 2017 despite a nearly 10 percent increase by manufacturers on brand list prices, CVS Caremark kept drug price growth nearly flat (0.2 percent) and lowered member monthly out-of-pocket costs, which helped improved adherence.

CVS Health is proud of our proven record of using innovative tools to hold down net costs. However, more can, and must, be done to provide prescription drug price relief and we support the Trump administration's focus on this important issue.

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What the HHS OIG Proposed Rule Does

- Eliminates the current discount safe harbor that enables PBMs to negotiate rebates from manufacturers on behalf of government plans; this takes effect on January 1, 2020
- Does not impact discounts on prescription pharmaceutical products offered by manufacturers to wholesalers, hospitals, physicians, pharmacies, third-party payors, and others buying drugs under federal health care programs
- Instead adds two new safe harbors, one for POS price reductions and another for PBM service fees; effective 60 days after publication of the final rule

While this proposal may be read as allowing PBMs to collect rebates as long as the plan is passing along 100 percent of them at the POS, the administration's rhetoric around this rule indicates a preference for a system where the PBM negotiates an upfront discount with the manufacturer and collects no rebates.

Under this system, pharmacies would collect a "chargeback" from the manufacturer that is the difference between the payment from the plan for the negotiated discounted price of the drug and the price of the drug paid by the pharmacy. This type of system would be a complete re-working of the drug supply chain and would impose significant burdens on pharmacies. The new manufacturer-PBM payment safe harbor proposed by the HHS would also address compensation arrangements for certain services provided by the PBM to the manufacturer, by requiring fees between manufacturers and PBMs to be fixed amounts per service and meet other requirements.

Potential Impact from Proposed Legislation

As part of the proposed rule, HHS had the actuaries at the Centers for Medicare & Medicaid Services (CMS) analyze the impact on Medicare Part D.

The actuaries estimate that under the proposed rule:

- Part D premiums would initially increase by 19 percent and this increase would grow to 25 percent
- Taxpayer costs would increase by $196 billion over 10 years
- Drug manufacturers would spend $39.8 billion less over 10 years in lower payments in the coverage gap discount phase of the Part D benefit
- A majority of beneficiaries would have higher overall costs because premium increases would be greater than decrease in prices at the pharmacy counter

In addition, CMS actuaries also estimate that while drug list prices may go down, net drug prices would actually rise under the proposed rule, providing drug manufacturers with a second financial windfall.

UNDER THE PROPOSED RULE

15% of the rebates currently negotiated by PBMs would be retained by manufacturers.

Of the remaining 85 percent of the rebates:

- 25 percent would go to reduce list prices
- 75 percent would be reflected as discounts

By the end of the 10 year scoring window, the actuaries believe that net drug prices would be equal to net drug prices if the change had not been made.

President Trump's administration has made reducing prescription drug prices a major area of focus and we support them in this goal. Unfortunately, the HHS OIG proposed rule would lead to higher drug prices for everyone, and increased premiums for most beneficiaries and costs to the government.

If, as the administration expects, commercial health plans follow this rule, they will be faced with a one-size-fits-all policy of applying the discount at the POS instead of having the flexibility to use rebate dollars in the way that is most appropriate for their plan and beneficiaries. The proposed rule may also be effecting a complete re-work of the drug supply chain, imposing significant financial costs on pharmacies, and providing a windfall to manufacturers.

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*Pharmacies can use a "chargeback" from the manufacturer to collect against the difference between the payment from the plan and the price of the drug paid by the pharmacy.

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