

United States Senate
WASHINGTON, DC 20510

March 7, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure,

I support the Centers for Medicare & Medicaid Services (CMS) proposed rule to end direct and indirect remuneration (DIR) fee clawbacks.¹ As the proposed rule states, pharmacy DIR fees have grown more than 107,400% between 2010 and 2020.² This has caused increased costs for seniors at the pharmacy counter. By ending DIR fee clawbacks, the proposed rule would reduce seniors' net out-of-pocket prescription drug costs by \$21.3 billion over 10 years.³ The unsustainable growth in DIR fee clawbacks has also hurt pharmacists, especially those operating independently in rural Iowa.⁴ I urge CMS to strengthen the proposed provisions as comprehensively as possible and finalize the proposed rule without delay.

For years, I've remained concerned about a Part D plan and Pharmacy Benefit Manager (PBM) practice of applying DIR fees through a clawback of payments made after the point-of-sale.⁵ In a 2019 letter to CMS I wrote, "The retroactive extraction of such fees is straining the viability of pharmacy operations. Pharmacy closures harm our communities and have adverse health consequences for patients."⁶ Further, this is why I am committed to prohibiting retrospective recoupment of payments to pharmacies by Part D plans and PBMs in the bipartisan Prescription Drug Pricing Reduction Act (PDPRA).⁷ In the 116th Congress, I helped enable MedPAC to monitor, recommend, and analyze Medicare drug payment information including

¹ Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs, 87 Fed. Reg. 1842-1960 (to be codified at C.F.R. Parts 422 and 423).

² *Id.*

³ *Id.*

⁴ Kaiser Family Foundation, "How Rural Communities Are Losing Their Pharmacies," Markian Hawryluk, November 15, 2021, <https://khn.org/news/article/last-drugstore-how-rural-communities-lose-independent-pharmacies/>.

⁵ Letter to Health and Human Services (HHS) Secretary Alex Azar and CMS Administrator Seema Verma from 23 Senators, September 2019, <https://www.grassley.senate.gov/news/news-releases/grassley-wyden-bipartisan-senators-push-hhs-pharmacy-dir-reforms-medicare-part-d>.

⁶ *Id.*

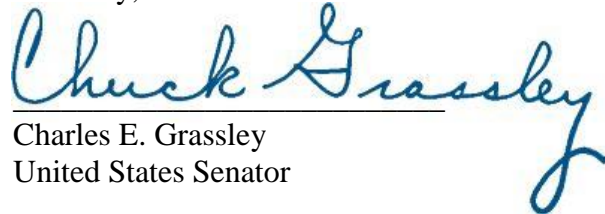
⁷ Office of Senator Chuck Grassley, "Grassley, Wyden Release Updated Prescription Drug Pricing Reduction Act, Reach Agreement On Health Extenders," press release, December 6, 2019, <https://www.grassley.senate.gov/news/news-releases/grassley-wyden-release-updated-prescription-drug-pricing-reduction-act-reach>; Office of Senator Chuck Grassley, "Grassley Introduces The Updated Prescription Drug Pricing Reduction Act Of 2020," press release, July 2, 2020, <https://www.grassley.senate.gov/news/news-releases/grassley-introduces-updated-prescription-drug-pricing-reduction-act-2020>.

DIR fees.⁸ MedPAC is expected to provide initial results on their analysis of DIR fees this spring.⁹ I look forward to this analysis and how it can inform future policymaking.

I am committed to lowering prescription drug costs in a bipartisan and comprehensive manner.¹⁰ Drug prices are rising above the cost of inflation and more Americans are having a harder time paying the higher costs.¹¹ I hear stories about rising drug costs all the time at my 99 county meetings. In 2019, I negotiated, introduced, and marked-up the PDPRA. It passed out of the Finance Committee on a bipartisan vote of 19 to 9.¹² This legislation meaningfully lowers prescription drug costs by saving seniors \$72 billion and taxpayers \$95 billion. It does this by capping out-of-pocket expenses under Part D, eliminating the donut hole, and lowering patient cost sharing from 25% to 20% in the initial coverage phase. It slows the growth of rising drug prices in Medicare at the inflation price index, which ends uncapped taxpayer-funded subsidies under Medicare to Big Pharma. It also establishes more sunshine and accountability into the prescription drug industry while promoting competition and innovation. I have never stopped working to advance the bipartisan, negotiated, and balanced PDPRA. I urge the Biden administration to work with me to pass the bipartisan PDPRA that will comprehensively lower prescription drug costs.

I have consistently supported policies to end DIR fee clawbacks and support this proposed rule to reform DIR fees. By strengthening the proposed rule and finalizing it without delay, this rule will lower patient costs, maintain patient access to rural pharmacies, and provide pharmacists payment predictability that is needed to run their businesses.

Sincerely,



Charles E. Grassley
United States Senator

⁸ Consolidated Appropriations Act, 2021, Public Law 116-260, Division CC, Title I, Subtitle B, Section 112.

⁹ MedPAC, “The Medicare prescription drug program (Part D): Status report,” January 14, 2022, <https://www.medpac.gov/wp-content/uploads/2021/10/Part-D-status-MedPAC-Jan22.pdf>.

¹⁰ 117 Cong. Rec. Vol. 168, No. 20 (daily ed. February 1, 2022) (statement of Senator Grassley).

¹¹ AARP, “Trends in Retail Prices of Brand Name Prescription Drugs Widely Used by Older Americans, 2006 to 2020,” June 2021, <https://www.aarp.org/content/dam/aarp/ppi/2021/06/trends-in-retail-prices-of-brand-name-prescription-drugs-widely-used-by-older-americans.10.26419-2Fppi.00143.001.pdf>; HHS – Office of the Assistant Secretary for Planning and Evaluation, “Prescription Drug Affordability among Medicare Beneficiaries,” January 19, 2022; Kaiser Family Foundation, “Prices Increased Faster Than Inflation for Half of all Drugs Covered by Medicare in 2020,” February 25, 2022, <https://www.kff.org/medicare/issue-brief/prices-increased-faster-than-inflation-for-half-of-all-drugs-covered-by-medicare-in-2020/>.

¹² Office of Senator Chuck Grassley, “Grassley Introduces The Updated Prescription Drug Pricing Reduction Act Of 2020,” press release, July 2, 2020, <https://www.grassley.senate.gov/news/news-releases/grassley-introduces-updated-prescription-drug-pricing-reduction-act-2020>.