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June 28, 2016

Mr. Andy Slavitt
Acting Administrator
Department of Health and Human Services
Centers for Medicare and Medicaid Services
Hubert Humphrey Building, Room 337H
Washington, D.C. 20201

Dear Acting Administrator Slavitt,

We write to request that you review Humana's proposed amendments to its Pharmacy Provider Agreement for the 2017 Part D plan year that were sent to pharmacies in late May. We believe this amendment includes multiple predatory provisions which take advantage of independent community pharmacies inability to negotiate Pharmacy Provider Agreements.

Independent community pharmacies dispense over 40 percent of the prescriptions nationwide and provide invaluable support and guidance to patients, particularly seniors, as an integral part of the patient's health care team. In fact, they provide a variety of patient-centered services in multiple areas including the coordination of medications, refill synchronization programs, medication therapy management and patient education.

Humana's amendment to the Pharmacy Provider Agreement implements provisions that would withhold \$5.00 from the pharmacy for all "eligible" claims, with the possibility for the pharmacy to "earn back" the \$5.00 based on their performance using certain performance standards. These performance standards are patient adherence metrics which measure the percentage of days over a set time period a patient has certain medications. There are 3 sets of medications on which the metric is based: (1) Diabetic medications, (2) Cholesterol medications, and (3) Hypertension medications.

The Humana proposed amendment is an opt-out instrument. In other words, a pharmacy has to affirmatively "opt-out" or they will be presumed to have accepted the terms of the amendment. **It is critical to emphasize that this proposed amendment affects participation in the base or**

standard Part D network—not the preferred pharmacy network. In effect, a pharmacy must accept the terms of this proposed amendment if they wish to serve Humana Part D beneficiaries. The structure of this amendment and its tie to participation in the base Part D network is in effect a “pay to play” fee imposed on pharmacies to participate in the Part D program—something that is completely at odds with CFR 423.505(b)(18) under which Part D sponsors must agree “to have a standard contract with **reasonable and relevant terms and conditions** of participation whereby any willing pharmacy may access the standard contract and participate as a network pharmacy.”

As you know, the Centers for Medicare and Medicaid Services (CMS) created the star rating system which rates providers based on patient adherence with the intent to help educate consumers on quality health care and make quality data more transparent. In addition, there is a metric “dashboard” called the Electronic Quality Improvement Platform for Plans and Pharmacies (EQuIPP) to make determinations for this metric about patient adherence within pharmacies.

The Humana proposal does not base the pharmacy reimbursement on meeting objective goals on the EQuIPP dashboard but rather bases a pharmacy reimbursement solely on how a pharmacy compares to all other pharmacies in the program. In doing so, Humana has enlisted their actuaries to devise a formula that will guarantee them over 60 percent retention of the withheld reimbursement money. Humana has created their “guarantee” by only refunding the withheld \$5.00 to pharmacies that are in certain percentiles as compared to their peers in each of the 3 medication categories listed above. If a pharmacy is in the 80th to 100th percentile in a particular category, as mentioned above, they are refunded \$2.00 per prescription, whereas if they are in the 50th to 80th percentile they will be refunded \$0.67, and if the pharmacy is below the 50th percentile they will receive none of the withheld reimbursement.

By applying the tiers listed above, if a pharmacy were in the 80th percentile in two of the categories and one category in the 78th percentile, then the pharmacy would get \$4.67 of the \$5.00 withheld per prescription. Therefore, the pharmacy would be losing \$0.33 per prescription simply because it wasn’t quite able to crest the 80th percentile even though it is likely only tenths of a percentage point behind the 80th percentile. In fact, if all 3 categories were at 78 percent the pharmacy would lose \$2.99 per prescription. Given that the average independent community pharmacy fills 62,379 prescriptions per year, these two pharmacy best case scenarios would end up costing the pharmacies \$20,476.50 and \$185,529.50 per year.

A pharmacy could be a 5 star pharmacy for patient adherence and yet receive no reimbursement or less than the \$5 taken out at the beginning. Furthermore, this system unduly burdens small pharmacies and protects large chain pharmacies. Chain pharmacies have so many patients that if a few don’t properly adhere to their medications the effect will be outweighed by the rest of their

patients. However, at small independent community pharmacies, if even one patient were to not adhere perfectly to their prescription it could cost pharmacies tens of thousands of dollars by moving them from the top bracket to the one below.

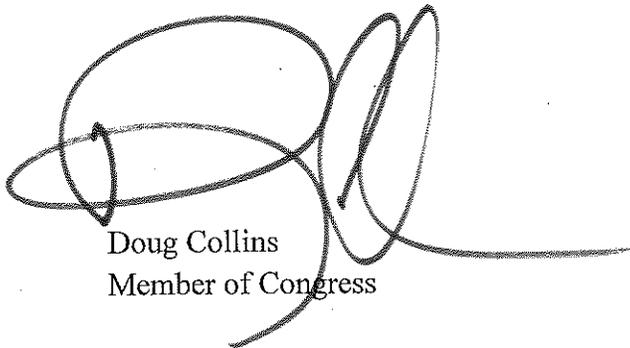
Humana is forcing independent community pharmacies to make the choice between going out-of-network, thus losing a substantial number of customers, or gamble that they will be in the 80th percentile based on data that has nothing to do with patient care. Moreover, Humana's letter gave pharmacies only 30 days from the date of receipt to opt-out otherwise they are automatically opted-in to the program. This is simply not enough time for pharmacies to be able to analyze the consequences of such a proposal or get clarification. In doing so, Humana is preventing pharmacies from making informed decisions so as to force as many pharmacies as possible into this program.

We believe these insurer-forced changes are anti-competitive behavior. They disproportionately impact independent community pharmacies compared to large scale retail pharmacies, and pharmacy quality measures were not intended to be used as an excuse to punish or hinder pharmacies. Instead, they were intended to incentivize patient adherence and provide greater transparency.

To that end, we urge you to review the Humana amendment which it is forcing upon pharmacies in order to continue to serve Medicare patients under Part D. Additionally, we urge you to encourage Humana to withdraw these amendments, rather than forcing pharmacies to make these detrimental decisions in a short time frame and prior to viewing their contracts. This railroading of small independent community pharmacies and the improper application of CMS' patient adherence metrics deserve further scrutiny.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Doug Collins
Member of Congress



Earl L. "Buddy" Carter
Member of Congress