



Committee On Finance

Max Baucus, Chairman

NEWS RELEASE

<http://finance.senate.gov>

For Immediate Release
February 15, 2007

Contact: Carol Guthrie
(202) 224-4515

BAUCUS SAYS CMS RULE WOULD HURT SMALL AND RURAL PHARMACIES, MEDICAID BENEFICIARIES

Senator cautions CMS against deep cuts to Medicaid reimbursement rates

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) is questioning a rule proposed by the Centers for Medicare and Medicaid Services (CMS) that would make changes to Medicaid pharmacy payments. In a letter hand-delivered to CMS Acting Administrator Leslie Norwalk during a meeting Wednesday, Baucus expressed concern that the proposed rule will severely reduce the payments that Medicaid makes to pharmacies, threatening small and rural pharmacies and the Medicaid beneficiaries who rely on them. The proposed rule will create a new definition of the average manufacturer price (AMP) of pharmaceuticals, which will be the measure that CMS uses to determine the Medicaid reimbursement payments that pharmacies receive. Baucus cautioned that lowering reimbursement rates too much could jeopardize not only pharmacies' survival but also Medicaid beneficiaries' access to their medicines.

“CMS’s proposal may cut rates too drastically, particularly for small and rural pharmacies,” said Baucus. **“If pharmacies can’t stay financially afloat, customers can’t get their medicines. I want CMS to know that I’m concerned, and that I’ll be watching to make sure that Medicaid beneficiaries in Montana and across the country aren’t left without a way to get the medicines they need.”**

The Deficit Reduction Act of 2005 (DRA) required CMS to create a new definition of the AMP. The Senate Finance Committee has jurisdiction over the Medicaid program. The text of the letter follows here.

February 14, 2007

Via Hand Delivery

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Norwalk:

I am writing regarding my concerns with how CMS is implementing certain Medicaid pharmacy pricing provisions of the Deficit Reduction Act of 2005 (DRA). Specifically, I am concerned with several provisions in CMS's December 15, 2006 notice of proposed rulemaking on Medicaid drug pricing.

While I was encouraged by the speed with which you issued the proposed regulation and by your multiple requests for public comment, a number of decisions you made are likely to adversely affect community pharmacies. In my view, CMS should issue a final regulation that protects Medicaid beneficiaries' access to their local community pharmacist, creates incentives to use generic drugs, and strengthens the pharmacy infrastructure. Your proposed regulation falls short of achieving these goals.

Publication of AMP Data

In a letter I sent to then-Administrator McClellan on May 23, 2006, I said that the release of inaccurate and inconsistent average manufacturer price (AMP) data could cause disruptions in the Medicaid program and the broader pharmaceutical marketplace, and could have devastating unintended consequences to community pharmacies in Montana and across the country. In that regard, I believe that CMS made the correct decision last spring to not release the AMP data.

CMS has now said that it will release AMP data for brand name and generic drugs this spring. Nothing, however, has changed in the way that manufacturers calculate AMP that would make it a more consistent or reliable benchmark for pharmacy reimbursement. Because AMP has never been used as a basis for pharmacy reimbursement before, it is imperative that it be as accurate and consistent as possible. Therefore, I continue to believe that AMP data should not be released until it is calculated based on a uniform definition that is used by all manufacturers.

The DRA required that such a definition be developed through the rule-making process, but that process is not yet completed. It makes little sense to release current AMP data for use by states and the public if they are not consistently calculated by manufacturers, or if the method by which they will be calculated will change once the regulation's definition of AMP is made final. It does not seem that the problems that former Administrator McClellan identified with the release of AMP data in mid-2006 have been corrected, so I believe that publication now would have the deleterious effects that he foresaw. Therefore, I ask that CMS continue to delay release of AMP data until a final AMP definition is in effect.

Create Accurate Benchmark for AMP and RSP

In the letter I sent CMS last May, I said that it was critical that the drug pricing information that CMS provides to the states and public is accurate and useful. In theory,

AMP is supposed to represent the approximate prices paid by retail pharmacies for medications. I am concerned, however, that AMP as defined in your proposed regulation blends the prices paid by different types of purchasers, each of which may pay a different net price for medications. For example, in addition to traditional retail pharmacy sales, manufacturers would be required to include mail order sales and pharmacy benefit manager rebates in their AMP calculations. I question the utility of a new retail pharmacy reimbursement benchmark that includes these purchasers and discounts because they distort the benchmark beyond the point where it can accurately approximate prices paid by retail pharmacies.

Moreover, CMS has also proposed to define retail survey price (RSP) as an average of prices paid by different purchasers, including traditional retail pharmacies, as well as mail order and nursing home pharmacies. I also question the usefulness of an RSP that includes a blend of all these purchasers. For that reason, I ask that CMS revisit the proposed definitions of AMP and RSP to make them more consistent with the intended purposes of these measures.

Assess Impact of New Generic Reimbursement Formula

According to CMS, the new Medicaid payment formula for generic drugs will reduce pharmacy payments for these drugs by \$8 billion over the next 5 years. I am concerned that these reductions may discourage the use of lower-cost generic drugs in Medicaid. Adding to this concern is the recent Government Accountability Office (GAO) report that found that these new generic payment limits would be about 36 percent below the cost at which retail pharmacies can purchase generic drugs.

While I recognize that the GAO report has its limitations, many of which you pointed out in your comments on a draft version of the report, I am struck by the number of generic products that the report claimed would be reimbursed below the costs at which retail pharmacies can purchase generics. Many of the drugs that GAO studied are popular and frequently used by Medicaid beneficiaries. We need to do all that we can to continue to encourage the use of lower-cost generic drugs in Medicaid when appropriate. I would like to better understand CMS' perspective on this GAO report, and ask that you expeditiously provide me with better information and data about how these new generic payment limits will affect generic drug use in Medicaid. I would also like to know what CMS is doing to encourage states and pharmacies to continue to dispense lower-cost drugs in Medicaid, which save significant amounts of federal and state taxpayer dollars.

Mitigate Financial Impact on Retail Pharmacies

Finally, I am very concerned about the collective negative economic effect of these proposed DRA changes on the traditional retail pharmacies in Montana and across the country. I believe that retail pharmacies, many of whom are already bearing the financial brunt of lower payments under Medicare Part D, will be hit hard by these changes. Community pharmacies are often the only health care providers in many communities, especially in rural areas. Given how much community retail pharmacies

have done to help Medicaid programs to control their drug costs and to encourage use of generic drugs, it makes little sense to take billions of dollars out of this infrastructure. I ask that you work with me to strongly communicate with state governors and Medicaid programs about the need to increase dispensing fees, particularly for generic drugs.

Thank you for your prompt attention to my concerns. I would be happy to discuss them with you further. I look forward to your response by February 28, 2007. Please have your staff direct any questions to David Schwartz of my Finance Committee staff at (202) 224-4515.

Sincerely,

Max Baucus
Chairman

###