



Ensuring patient access to quality pharmacy care services, the viability of community pharmacy and the pharmacy profession.

December 22, 2010

Via Email: andy.vasquez@hhsc.state.tx.us
Mr. Andy Vasquez, Deputy Director
Health and Human Services Commission
Braker Center, Building H
11209 Metric Boulevard
Austin, Texas 78758-4021

Re: Texas Health and Human Services Commission ("HHSC") Proposed Medicaid Payment Rate Reduction for Pharmacy Dispensing Fee

Dear Andy:

As you know, I am the Executive Director of the Texas Pharmacy Business Council (TPBC), which is a collaborative organization between American Pharmacies and the Academy of Independent Pharmacists - Texas. TPBC represents independent pharmacists and small business owners dedicated to preserving the independent pharmacy profession. Our mission is ensuring access to quality pharmacy services, the viability of community pharmacy and the pharmacy profession. TPBC's membership is dedicated to providing quality Medicaid pharmacy services and ensuring proper access by Texas Medicaid patients to these services.

I am writing to formally submit TPBC's written comments to HHSC regarding its recently (December 10, 2010) proposed additional one percent (1%) reduction in Medicaid Payment Rate for pharmacy dispensing fee. Based on your December 10, 2010 email to me, it is my understanding that this additional one percent (1%) reduction of the pharmacy dispensing fee will be effective on February 1, 2011, and that it will be implemented similarly to the one that was recently imposed on the pharmacy profession and effective September 1, 2010. While the written materials about this proposal are limited, I gather that Section 355.8551 of the Texas Administrative Code will once again be affected, as it addresses the reimbursement methodology for pharmacy services dispensing fee.

Based on your December 10, 2010 email to me, I understand that the payment rate for the pharmacy dispensing fee will be reduced by an additional one percent (1%) effective February 1, 2011, such that the proposed reductions are now as follows:

	Current Medicaid Fee (9/1/10)	Proposed Medicaid Fee (2/1/11)
Fixed component	\$7.43	\$7.35
Variable component	\$1.98%	1.96%

It is also my understanding that there will be no changes or reductions to the delivery and premium preferred generic incentive components of the Medicaid Payment Rate for Pharmacy Dispensing Fee.

First, TPBC requests a written response from HHSC as to its compliance with the Administrative Procedures Act in regard to the proposal and adoption of this payment rate reduction. Specifically, when will the rules pertaining to this additional one percent (1%) payment rate reduction for pharmacy dispensing fee be formally published in the Texas Register so that the pharmacy profession is allotted ample time to request a public hearing and submit written comments?

Second, it again appears to TPBC that HHSC has not proposed these reimbursement reductions for the pharmacy dispensing fee to Medicaid pharmacy providers in a manner consistent with the federal Medicaid statute. There is no indication to TPBC that HHSC has conducted the requisite analysis of the efficiency, economy, quality of care, and effect on provider participation issues and whether the rate cuts would ultimately affect Medicaid recipients' access to health care services. This analysis is necessary to fully comply with the Medicaid statute, 42 U.S.C. 1396a (a)(30)(A), as well as Section 355.201 of the Texas Administrative Procedures Act. This provision of the Medicaid statute provides methods and procedures relating to the utilization of, and the payment for, care and services available under the plan, as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area.

While TPBC represents independent pharmacy providers who are beneficiaries of the aforementioned equal access provision of the Medicaid statute, the provision is undeniably intended to benefit the recipients (Texas Medicaid patients) by allowing them equivalent access to health care services. In regard to this Medicaid pharmacy dispensing fee reduction, TPBC asks that HHSC comply with its mandatory obligations as defined in the Medicaid statute, which provides that the state plan for medical assistance must assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area. Medicaid payments for all practitioners must be sufficient enough to enlist enough providers so that care and services available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Medicaid recipients must be entitled

access equal to that of the insured population. If HHSC implements the pharmacy dispensing fee rate reduction, some independent pharmacies may be forced to curtail services (such as home delivery services), and the future economic viability of these pharmacies could be affected.

Independent pharmacies represent a significant percentage of the licensed community pharmacies in Texas, and their businesses will be impacted by the reimbursement reductions. Independent pharmacies are on the front line interacting with Medicaid patients and are among the first providers to feel the burden of a reimbursement reduction. TPBC members report considerable erosion in their gross margin on Medicaid prescriptions this year, as a result of the lawsuit regarding benchmark pricing for drug products, as well as HHSC's aggressive lowering of product reimbursement. Further reimbursement reductions may seriously restrict their ability to adequately serve Medicaid patients.

According to your email, HHSC is cutting the pharmacy dispensing fee by an additional one percent (1%) due to Texas' current budgetary constraints and concerns, and without a proper assessment of the relevant factors of equal access, efficiency, and quality of care, in accordance with the Medicaid statute. There is ample evidence suggesting that the recently enacted and this newly proposed pharmacy dispensing fee reduction are overwhelmingly based on budgetary concerns. It seems HHSC would not have made the reduction in rates but for the need to balance the budget. Budgetary considerations cannot be the conclusive factor in decisions regarding Medicaid reimbursement reductions. The state may not ignore the Medicaid statute's requirements in order to suit budgetary needs. If budgetary reasons are the guiding force and the relevant factors did not in any way form the basis for the rate reduction, then HHSC is in violation of the requirements of 42 U.S.C. 1396a(a)(30)(A). If a state plan that does not comply with this provision, federal payments made to the state could be in jeopardy.

In 2007, HHSC acknowledged the need for an increase in the pharmacy dispensing fee, the first in more than a decade. HHSC urged CMS to be mindful of the congressional intent regarding pharmacy reimbursement in the Medicaid program, as Congress made very clear the importance of providing pharmacies that participate in the Medicaid program with adequate dispensing fees, which in turn results in an efficient and thriving system of pharmacy providers available to serve Medicaid patients. According to a May 2008 study commissioned by HHSC, the average cost to dispense a Medicaid prescription in Texas is \$9.41. Clearly, the \$5.14 rate paid by Texas Medicaid to pharmacies in 2007 was entirely insufficient. The inadequacy of that fee was even more remarkable when one takes into account the reimbursement approach that HHSC utilizes for Medicaid drug products. After an arduous and lengthy process, CMS ultimately agreed with HHSC, and the pharmacy dispensing fee was revised from \$5.14 to \$7.50. HHSC's proposed reimbursement reduction undermines this tremendous effort and accomplishment, and entirely contradicts the May 2008 study as well as HHSC's position to CMS whereby HHSC validated the fee increase to CMS and was the basis of gaining the overwhelming support of the Texas congressional delegation.

Mr. Andy Vasquez, Deputy Director
Health and Human Services Commission
Proposed Medicaid Pharmacy Dispensing Fee Reduction
Page 4

HHSC has a stellar record of controlling Medicaid prescription drug expenditures, due its unique dispensing fee formula and aggressive product reimbursement. HHSC should encourage provider behaviors that eliminate waste and ultimately benefit the state, such as providing additional incentives for the dispensing of lower cost generic products. Given the fact that the average brand name prescription costs the Texas Vendor Drug Program over \$100.00, the average generic prescription less than \$20.00, and Texas Medicaid currently ranks 42nd in generic dispensing rate, perhaps HHSC needs to carefully review generic versus brand name reimbursement and provider incentives. These proven incentives are the appropriate mechanism to address budgetary concerns and save money, not reimbursement cuts.

TPBC is available to interact with HHSC to identify many other incentives and cost saving measures that will benefit the state and provide for a more efficient Medicaid program, such as medication therapy management (MTM). Perhaps Texas should look at pharmacists' MTM services that have been implemented in Medicare Part D and will be implemented in federal health care reform legislation. We urge you to establish a pharmacy task force comprised of independent pharmacists and relevant stakeholders, dedicated solely to identifying dramatic cost saving measures. The proposed reductions in the pharmacy dispensing fee may appear modest to HHSC, but these aforementioned cost savings measures that a pharmacy task force could present to HHSC for immediate implementation could result in more meaningful savings to Medicaid - savings far exceeding one percent (1%).

Thank you for HHSC's consideration of these written comments. I look receiving a response from HHSC as to these matters.

Sincerely,

Richard E. Beck, RPh, Executive Director
Texas Pharmacy Business Council
1001 Congress Avenue, Suite 250
Austin, Texas 78701
Phone 512-992-1291
Fax 512-992-1391
rbeck@txrxCouncil.org

cc: Texas Pharmacy Business Council Directors (via Email)