



# Maximum Allowable Cost Transparency Legislation is Necessary to Best Serve Patients

## The Issue

The Centers for Medicare & Medicaid Services (CMS) issued a final rule, which went into effect on January 1, 2016, requiring transparent maximum allowable cost (MAC) pricing practices. The rule requires Part D sponsors to make the reimbursement rates for drugs under MAC pricing standards available to contracted pharmacies.<sup>1</sup> Pharmacy benefit managers (PBMs), which administer drug benefits, set MAC prices for generic drugs and brand name drugs that have a generic version (known as multi-source brands) to establish the upper limits of what they will pay pharmacies. Historically and before the rule was finalized, PBMs were not required to disclose the processes by which they chose products for this list or the formulas used to determine and update the MAC price, though pharmacies are often reimbursed based on MAC lists created and controlled by PBMs. Further, PBMs were not required before the final rule to adhere to standards with regard to how products are selected for inclusion on a MAC list and no standards exist for how they determine prices.

When pharmacies contract with plan sponsors without knowing the reimbursement rates they will receive for drugs they are dispensing, it presents significant financial and operational challenges. Additionally, pharmacies do not have access to a functional appeals process if they believe the PBM-set MAC price is not valid. Congress should pass the MAC Transparency Act (H.R.244) to further expand and improve the transparency of drug pricing standards and help create a more fair pharmaceutical marketplace.

## Background

In January 2015, after the CMS issued the final rule to revise the Medicare Advantage and Part D prescription drug benefit program regulations, Representatives Doug Collins (R-GA) and Dave Loebsack (D-IA) introduced the MAC Transparency Act (H.R.244). This legislation would increase the transparency of drug payment rates in Medicare Part D, establish a process

to appeal inappropriate reimbursement, and expand the rule to the Federal Employees Health Benefits (FEHB) program and TRICARE pharmacy program (the health insurance program for military members and their families).<sup>2</sup> If enacted, the legislation would codify policies included in the CMS final rule and in doing so, require PBMs to: (1) update their MAC standard at least once every seven days to reflect the market price of a drug accurately; (2) disclose to pharmacies the sources used for making any updates; (3) make advance disclosures to pharmacies of all individual drug prices to be updated if the source is not publicly available; and (4) establish a process to appeal, investigate, and resolve disputes regarding individual drug prices that are lower than the pharmacy acquisition price.

Furthermore, the legislation would also protect beneficiaries' privacy and their rights to choose their pharmacy. The legislation includes provisions that prohibit PBMs from transmitting personally identifiable utilization or claims data to a PBM-owned pharmacy, unless the beneficiary has voluntarily elected to fill their prescription at that pharmacy. The legislation also prohibits PBMs from requiring a beneficiary to use a retail pharmacy, mail order pharmacy, specialty pharmacy, or other pharmacy entity that the PBM has an ownership interest, or vice versa, or to give an incentive that would encourage a beneficiary to use a selected incentivized pharmacy.

## Our Position

Innovatix urges Congress to pass the MAC Transparency Act, which will improve and expand upon CMS' final rule and ensure the transparency of MAC pricing and create a more fair pharmaceutical marketplace. This legislation will strengthen the CMS' existing policy and appropriately expand the provisions to TRICARE and FEHB beneficiaries. Passage of the MAC Transparency Act is an important step toward ensuring that Medicare and other federal health care program beneficiaries have consistent access to prescribed medications.

<sup>1</sup> Department of Health and Human Services, Centers for Medicare & Medicaid Services, 42 CFR Parts 417, 422, 423, et al. Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Final Rule. "Prescription Drug Pricing Standards and Maximum Allowable Cost (§ 423.505(b)(21))" (page 29882), May 24, 2014. <<https://www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11734.pdf>>

<sup>2</sup> The MAC Transparency Act of 2015 (H.R.244), text available at: <https://www.congress.gov/114/bills/hr244/BILLS-114hr244ih.pdf>