NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

July 8, 2019

Colorado Medical Services Board
Colorado Department of Health Care Policy & Financing
1570 Grant Street
Denver, CO 80203-1818

Via email: chris.sykes@state.co.us

Re: Revision to the Medical Assistance Rule concerning Program Integrity, Section 8.000

To Whom It May Concern:

On behalf of our members operating pharmacies in the state of Colorado, the National Association of Chain Drug Stores ("NACDS") thanks the Colorado Medical Services Board ("Board") for the opportunity to comment on the proposed changes to the Medical Assistance Rule under Section 8.000 pertaining to program integrity. As providers in the Medical Assistance program, pharmacies appreciate the Board's efforts to identify and eliminate fraud, waste and abuse and to maintain program integrity. However, we do have some concerns with the proposed rule changes that warrant further revision before the rules are adopted.

- 8.076.3 Recovery of Overpayments: We note that under 8.076.3 (C)(3), the Board has proposed to modify the way in which overpayments are calculated, allowing that "[i]n cases where sufficient records are not available to the reviewer or auditor, the recovery may be determined through a sampling of records so long as the sampling and any extrapolation from is reasonably valid from a statistical standpoint and is in accordance with generally accepted auditing standards." Additionally, the Board has proposed to delete language under 8.076.3 (C)(4) that outlines a provider's right to request an informal reconsideration or appeal of an identified overpayment. We are concerned that altogether, pharmacies may be inappropriately penalized without there being a process in place to challenge an audit finding, especially as the rule change would give auditors significant discretion to determine what constitutes a "sufficient records." To remedy this issue, we urge the Board maintain the existing language under 8.076.3 (C)(4) allowing pharmacists to appeal an identified overpayment.

- 8.076.6 Request for Written Response: Language under 8.076.6 proposes to require that when requested by the Department, a provider must submit a written response addressing failure to comply with rules, manuals, bulletins or other guidance issued by the Department. Written responses from providers must be provided within 30 calendar days of the request and address each identified area of failed compliance and either describe how the provider will come into and ensure future compliance, or explain the specific reason why the provider disagrees with the Department's findings of failed compliance. Given that elsewhere in the proposed rules under 8.076.1 (7)(n) the Board has proposed to establish that failure to provide a written response constitutes "good cause" for withholding provider payments, this proposed new section is highly problematic.

Notably, the proposed language would require providers to respond to allegations of non-compliance with a corrective action plan. However, the rule language does not reference any associated appeal rights. Additionally, the language under 8.076.6 (B) allowing the Department to suspend payments "until it determines the provider has come into compliance" would seemingly allow the Department to suspend payments before a provider even has the chance to respond to non-compliance allegation (and where appropriate and necessary, to appeal the allegation.) We urge the Board to further revise this rule section to address these concerns.

- 8.076.1 Definitions: As noted above, proposed rule changes under 8.076.1 (7)(n) would revise what constitutes "good cause" for the purpose of withholding provider payments or for denying, terminating or not renewing a provider agreement, to include "[failure of a provider] to provide a written response within thirty (30) days of the Department's request or the Provider has provided a written response but failed to meet the requirements set out in the Department's request as described in Section 8.076.6." Given that the arrival of Department requests may be delayed for numerous reasons that are outside of the control of a provider, especially as mailed, faxed and other such common methods of communication do not always make to the intended recipient in a timely manner, we ask the Board to revise the rule language under 8.076.1 (7)(n) to extend the timeframe during which a provider can respond to such requests to sixty (60) days.

NACDS thanks the Board for considering our comments on the proposed rule revisions. Please do not hesitate to contact me via email (mstaples@nacds.org) or by phone (817-442-1155) if we can be of further assistance.

Sincerely,

Mary Staples
Regional Director, State Government Affairs

cc: Angie Howes, Colorado Retail Council