VIA ELECTRONIC DELIVERY AND U.S. MAIL

Captain William Blanche,
TRICARE Management Activity
Federal Docket Management System Office
1160 Defense Pentagon
Washington, DC 20301-1160


Dear Captain Blanche:

On behalf of the Section of Public Contract Law of the American Bar Association (the Section), I am submitting the following comments to the proposed rule issued by the Department of Defense (DoD) to implement the provisions of Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA), Pub. L. No. 110-181, § 703, relating to the TRICARE Retail Pharmacy Program (TRRx) (Proposed Rule). The Section consists of attorneys and associated professionals in private practice, industry and government service. The Section’s governing Council and substantive committees have members representing these three segments, to ensure that all points of view are considered. By presenting their consensus view, the Section seeks to improve the process of public contracting for needed supplies, services and public works.¹

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association’s Board of Governors. The

¹ Christopher R. Yukins and Sharon Larkin, members of the Section’s Council, did not participate in the Section’s consideration of these comments and abstained from voting to approve and send this letter.
views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, therefore, should not be construed as representing the policy of the American Bar Association.²

In general, the Section strongly supports DoD’s proposal to implement Section 703 through voluntary agreements with pharmaceutical manufacturers. The Proposed Rule offers a tempered and thoughtful approach to implementing the provisions of Section 703. Nevertheless, the Section believes that there are significant issues presented by the proposal that DoD should address and resolve in its final rule. To that end, the Section offers the following comments.

I. REFUND AGREEMENT

A. Scope of Contemplated Refund Agreements

The Section interprets the reference in proposed § 199.21(q)(2) to “a particular covered drug” to mean that DoD intends to permit manufacturers to enter into refund agreements on a drug-by-drug basis. The Section believes that this approach is appropriate for two reasons. First, it aligns with TRICARE’s Uniform Formulary (UF) decision-making, which itself is conducted on a drug-by-drug basis. Second, it is consistent with the voluntary nature of the agreements contemplated by the Proposed Rule; a manufacturer’s decision to enter into an agreement for “a particular covered drug” would not require it also to agree to pay refunds on its other covered drugs. Nevertheless, to avoid confusion, the Section encourages DoD to state explicitly in the final rule that a manufacturer’s decision not to enter into a refund agreement for a particular drug will not prejudice the UF placement of any of the manufacturer’s other drugs for which the manufacturer does enter into a refund agreement.

B. Mutual Consideration Under the Contemplated Refund Agreements

Proposed § 199.21(q)(2) stipulates that a refund agreement shall be a condition for a particular drug’s inclusion on the preferred tier of the UF and the availability of that drug through network retail pharmacies without preauthorization. Nevertheless, the Proposed Rule does not indicate that the reverse is also true, i.e., that a drug that is not placed on the preferred tier of the UF will not be subject to a refund agreement, even if the drug’s manufacturer initially offered to enter into a refund agreement that would comply with proposed

² This letter is available in pdf format at: http://www.abanet.org/contract/regscomm/home.html under the topic “Health Care.”
§ 199.21(q)(1). This mutual consideration is explicitly guaranteed by DoD’s standard “Voluntary Agreement for TRICARE Retail Pharmacy Refunds for Uniform Formulary Placement” (UF-VARR) currently in use,3 and the Section believes it would be appropriate for DoD to clarify in the final rule that the same would be true with respect to the refund agreements contemplated by the Proposed Rule.

C. Effect of Contemplated Refund Agreements on Existing UF-VARRs

The Proposed Rule does not indicate whether (or how) the refund agreements contemplated therein would affect existing UF-VARRs between DoD and manufacturers for prescription drugs in therapeutic classes that previously have been reviewed. The Section urges DoD to refrain from attempting to amend existing UF-VARRs unilaterally to conform those agreements to the ultimate requirements of the final rule, as the Section believes that such action is not authorized under the existing agreements and would contravene established public contracting principles.

D. Terms of the Contemplated Refund Agreements

Although proposed § 199.21(q)(3)(ii) would require that refund procedures included in the refund agreements contemplated by the Proposed Rule “to the extent practical, incorporate common industry practices for implementing pricing agreements between manufacturers and large pharmacy benefit plan sponsors,” the Proposed Rule does not specify those procedures. The Section believes that because these procedures likely would impact manufacturers’ rights and obligations under the refund agreements, manufacturers should be given an opportunity to review those procedures and provide comments to DoD. The Section therefore recommends that DoD publish a template refund agreement in advance of finalizing the Proposed Rule and solicit comments from manufacturers and other interested parties. (The Section notes that, following the enactment of the Medicaid Drug Rebate Statute the Health Care Finance Administration (now the Centers for Medicare and Medicaid Services) published a template Medicaid Drug Rebate Agreement for notice and comment by interested parties).4 Regarding the specific refund procedures that should be included in the template refund agreement, the Section offers the following comments.

3 See UF-VARR (Version 3.1) ¶ 1a (“The refund quote(s) for the pharmaceutical agent(s) listed in Table 1 is (are) contingent upon such pharmaceutical agent(s) being included on the Department of Defense (DoD) Uniform Formulary (UF) in not worse than the formulary (2nd) cost share tier.”).

1. Limitation on Submission of Refund Claims

The template refund agreement should include a limitation on DoD’s ability to submit refund claims to manufacturers for units of their covered drugs dispensed to TRICARE beneficiaries outside of a defined period. The absence of such a limitation (which, we note is also absent from the current VARR template) would unfairly subject manufacturers to the onerous task of investigating and confirming the validity of claims far removed from the date of the underlying utilization, and manufacturers in many cases may lack the capacity and information management systems to do so. The Section recommends that DoD solicit comments from manufacturers on a reasonable limitation period that is consistent with prevailing commercial practices.

2. Duplicate Discounts

The template refund agreement should include a provision that would prohibit DoD from submitting refund claims for units of drugs for which manufacturers already have provided a discount or rebate to another payer or government program. For example, although the existing VARR template does not include such a provision, the “Process and Procedures Guide” used in conjunction with existing VARRs lists several types of non-eligible claims that TRICARE excludes from utilization data submitted to manufacturers. The Section recommends that the template refund agreement on its face similarly require DoD to exclude these non-eligible claims.

Moreover, notably absent from this list of non-eligible claims, are prescriptions dispensed by pharmacies participating in the Section 340B Program. Given the nature of the 340B program—which permits 340B covered entities to purchase all product, with very limited exceptions that likely would not apply to TRICARE utilization, at pricing that already is capped by statutory ceilings—rebates should not accrue based on prescriptions dispensed by 340B pharmacies to TRICARE beneficiaries. The payment of rebates on 340B scripts would result in a “double dip,” in that manufacturers would be providing a rebate on utilization of product that was purchased by the pharmacy at pricing that already had been capped by the formula set forth in Section 602 of the Veterans Health Care Act of 1992. It clearly was not the intent of that statute or of Section 703 that 340B pharmacy utilization be subject to statutorily capped pricing as well as an FCP-based rebate. Accordingly, the Section recommends that DoD designate all

\[\text{5 See “Process and Procedures Guide – Voluntary Agreements for Retail Refunds” (Version 1.0), at 8 (updated Apr. 1, 2008).}\]
prescriptions dispensed by Section 340B Program participants as non-eligible and exclude them from its refund claims.

3. Dispute Resolution

The template refund agreement should include provisions regarding procedures for disputing refund claims and resolving those disputes. To the extent that DoD intends to adopt the procedures set forth in the template UF-VARR agreement, the Section recommends that DoD revise those procedures to permit manufacturers to withhold refund payments for all disputed units until the dispute is resolved. These procedures would then align with those under the Medicaid Drug Rebate Program.

II. RETROACTIVITY ISSUES

The Proposed Rule appears to demonstrate an intent to apply the rebate agreement retroactive to utilization occurring as of the date of enactment of the FY08 NDAA: January 28, 2008. As explained below, the Section believes that a retroactive requirement presents both legal and practical difficulties.

A. Legal Concerns

Regulations, particularly those that impact new business transactions, are assumed to be prospective in effect unless a statute expressly requires retroactive application of that regulation. Section 703—which provides that prescription reimbursement transactions be subject to procurement prices after the date of enactment—clearly does not require that new agreements established by regulation apply retroactively to purchases preceding execution of the agreement.7

Underscoring this fact is that Congress specifically required implementation of Section 703 through a regulation, which reflected DoD’s substantive administrative decisions, and required the agency to provide an opportunity for notice and comment.

The legislative history underlying Section 703 shows that Congress expected DoD to complete the rulemaking process within a brief period after the effective date of the statute and did not expressly require the final regulation to

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6 See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988) (“[A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.”)

7 We note here, in particular, that the text of Section 703 does not contemplate a rebate mechanism.
apply retroactively.\textsuperscript{8} The fact that enactment was delayed until after the deadline for regulatory action had passed does not provide DoD with authority to apply its regulation retroactively. In this regard, the Section notes the similarity between delays in implementation of the FY08 NDAA and delays in implementation of the Deficit Reduction Act (DRA).\textsuperscript{9} Much as the FY08 NDAA, the DRA required pharmacies to be paid based on a pricing standard computed based on average commercial prices and further required regulatory action to implement the statute. In the case of the DRA the agency’s implementing regulation has been delayed. Nevertheless, the agency has made clear that the implementing regulation will be prospective only in its application. Accordingly, pharmacies will not have to adjust payments made by state Medicaid programs on prescription sales back to the date of enactment of the statute.

Section 703 of the FY08 NDAA contemplates that the implementing regulation would apply prospectively because it would necessarily involve the establishment of new agreements governing prescription purchases. The Section maintains that the reference in the statute to transactions after the enactment date was intended to preclude efforts to interpret the provisions as applying retroactively under existing agreements, which was an issue in the successful lawsuit against the Department of Veterans Affairs (VA) challenging the prior attempt to obtain FCPs for TRRx through a VA “Dear Manufacturer Letter” that interpreted existing Master Agreements as requiring the payment of rebates on TRRx utilization. A Proposed Rule implementing the FY08 NDAA would necessarily require new procurement agreements with manufacturers (e.g., to sell to pharmacies ordering in the name of DoD), the agreements necessarily would only apply to new orders and would not require re-pricing of prior purchases under other arrangements.

Indeed, the 2005 proposed rule issued by the General Services Administration (GSA) that was intended to effectuate retail pharmacy refund programs under the FSS contracts,\textsuperscript{10} applied only to new orders under new FSS contracts. Here, the Proposed Rule would likewise be implemented through new agreements to rebate a portion of prescription purchase prices charged by pharmacies rather than through purchases from manufacturers. Because, by agreement, these rebates would apply to pharmacy purchases as if DoD were procuring the prescription from the manufacturer, the terms of a new rebate agreement must apply to purchases after execution of the agreement in the same


\textsuperscript{9} Pub. L. No. 109-171.

\textsuperscript{10} 70 Fed. Reg. 19,045 (Apr. 12, 2005).
way a procurement agreement would apply only to purchases made subsequent to establish-ment of the agreement.

While the Senate was considering Section 703 of the FY08 NDAA, Senator Nelson, one of the Armed Services Committee members whose subcommittee initiated the legislation, inserted in the record an important clarification that the statute was not intended to breach any existing agreements between the Government and manufacturers.\(^{11}\) We note that if the Proposed Rule were applied retroactively to cover January 2008 and periods prior to the termination of existing previously existing UF-VARR voluntary rebate agreements, it would necessarily breach those agreements that offered lesser rebates in exchange for Uniform Formulary positioning. In those cases, the amount offered and accepted by DoD as a modification to a manufacturer’s FSS price was predicated on the evaluation of overall cost to DoD. By applying the FCP-based rebate requirement, DoD would be requiring payment of greater rebates (i.e., FCP-based rebates) than it accepted under those agreements for no additional consideration.

Conversely, if DoD were to re-evaluate cost effectiveness of drugs previously excluded from the UF in UF therapeutic class review that preceded the enactment of the FY08 NDAA, it would be profoundly unfair to require rebates on utilization of drugs that had been classified as non-formulary during the relevant period. Put another way, retroactive application of the FCP-based rebate would result in rebate payments for drugs that “lost out” and did not acquire UF status.

Finally, the Section points out the Proposed Rule appears to be inconsistent with regulations governing payment of rebates to commercial plans—as DoD intends, rebates paid on prescriptions purchased from pharmacies would only qualify as discounts to DoD if a rebate agreement applicable to the prescription purchase existed at the time of the purchase. In the commercial world, the Department of Health and Human Services “safe harbor” regulations,\(^{12}\) define when rebates paid to health care providers qualify for the discount exemption to the Anti-Kickback Act.\(^{13}\) Rebates that do not qualify could be considered illegal remuneration intended to induce purchase or referral of the drugs. To meet the safe harbor, terms of a rebate must be “fixed and disclosed in writing to the buyer at the time of sale of the initial purchase to which the discount applies, but which is not given at the time of sale.”\(^{14}\) Accordingly, in order to avoid running afoul of this


\(^{12}\) 42 C.F.R. § 1001.952.

\(^{13}\) 42 U.S.C. § 1320a-7b(b).

\(^{14}\) 42 C.F.R. § 1001.952(h)(4).
principled industry standard, DoD must necessarily apply the Section 703 rebate requirement prospectively only—*i.e.*, from the date of enactment of Section 703 UF-VARRs.

**B. Practical Complications**

In addition to the legal considerations articulated above, there are practical and fairness reasons for making the agreements prospective from the date of execution. First and perhaps foremost, retroactive application of rebate agreements would pose serious logistical problems. It is expected that the rule will not be final before manufacturers must calculate and submit their annual Non-Federal Average Manufacture Price (Non-FAMP) and FCP to the VA; the 2008 annual reports are due on November 15, 2008 and the reported figures set benchmarks for 2009 FSS pricing. If prescription units reimbursed by DoD to which rebates relate must be treated as procurements by DoD, VA likely would take the position that they would have to be excluded from the Non-FAMP. That means that the annual Non-FAMP would have to be recalculated to remove a year’s prescription utilization converted to package units, as well as the prior year’s third quarter Non-FAMP, which is compared to the prior year third quarter to determine if any additional discount is due. The FCP is based on these calculations. A requirement for all covered drug manufacturers to go back and restate 2009 pricing would present a tremendous administrative and logistical challenge.

It appears likely that a final rule will not be in place in time to adjust 2009 FCPs based on recalculated Non-FAMPs. This is especially true given the need for a 60-day review by Congress. Accordingly, if manufacturers have to restate FCPs, they will have to adjust retroactive to January 1, 2009 their FSS pricing extended to the “Big 4” agencies: the VA, the Public Health Service (PHS) and the Coast Guard, as well as DoD. Should the recalculation result in a credit due the manufacturer for each transaction, it would be very difficult for an agency like the VA to administer because there is no central purchasing office. Moreover, as the recalculation would result from the regulatory requirement not a calculation error, the VA could not treat the credit as a voluntary contract price reduction.

Finally, additional questions exist regarding whether the Centers for Medicare and Medicaid Services (CMS) would require manufacturers to restate previously reported best price, Average Manufacturer Price (AMP), and Average Sales Price (ASP) data. Accordingly, retroactive application of the program therefore could create additional administrative and logistical burdens on manufacturers of covered drugs.
III. FEDERAL PRICING PROGRAM CONSIDERATIONS

The Section urges DoD to consider the impact of the Proposed Rule and Section 703 on related federal pricing programs. Specifically, DoD should engage its peers at the VA and CMS and request those entities to provide definitive guidance to industry regarding this new program.

A. VHCA Section 603 Calculations

The Section believes DoD should consider the impact of the Proposed Rule on the price calculations of Non-FAMP and FCP established pursuant to the Veterans Health Care Act of 1992 (VHCA). Section 703 of the FY08 NDAA and the Proposed Rule incorporate these calculations into their provisions; equally important, the new rebate program will affect the underlying computation of these calculations. Therefore, the Section recommends that DoD seek input from VA on the following VHCA calculation issues on which industry will require clear guidance.

First, manufacturers must be informed regarding the proper treatment of Section 703 sales and rebates for purposes of calculating Non-FAMPs and FCPs. In particular, VA must offer guidance as to whether TRRx utilization should be included in the calculations as commercial transactions or excluded as Federal. Consistent with VA’s 2004 “Dear Manufacturer Letter” in which it stated that TRRx constituted a “virtual depot” entitled to FCPs under the terms of existing Master Agreements with manufacturers, VA required manufacturers to exclude TRRx utilization from their Non-FAMPs as Federal sales. The VA’s decision to require exclusion of rebate-based utilization appeared to be premised on the VA’s understanding in 2004 that there was a legal obligation to pay rebates under the existing VHCA Master Agreements. After the invalidation of that incarnation of the TRRx program following a successful court challenge, however, VA required manufacturers that received a refund of their TRRx payments from DoD to restate their Non-FAMPs for all refund-impacted periods to treat such TRRx utilization as commercial. It is critical that VA weigh in on this issue under the Section 703 program, given that the new program will, in fact, be voluntary.

16 Qualifying “depot contracting systems” established by the “Big Four” entities (VA, DoD, PHS, and the Coast Guard) are entitled to FCPs. 38 U.S.C. § 8126(a)(2).
18 Dear Manufacturer Letter (Nov. 9, 2006).
will require guidance with respect to: (1) drugs for which UF-VARRs are executed; and (2) drugs for which no UF-VARRs are executed.

Additionally, manufacturers will require guidance as to whether Non-FAMPs from earlier years/quarters will be impacted in the event that TRRx utilization is to be identified and excluded as Federal sales. In this regard, the Section urges both DoD and the VA to exercise restraint and common sense by making certain that any changes with respect to the treatment of TRRx utilization be applied only on a prospective basis. As discussed above, retrospective application of any changes in the treatment of TRICARE retail utilization could result in an untenable situation in which every Section 703 participating manufacturer of covered drug would have to: (1) recalculate and restate their Non-FAMPs and FCPs for the period of time elapsed from January 28, 2008 until an agreement is executed; and (2) work with the Big 4 agencies to obtain credits and provide refunds where recalculated pricing differs from that originally reported.

Second, the VA should also address issues concerning irregular Non-FAMPs and FCPs. In connection with its administration of the VHCA program, VA has established special rules to deal with anomalies including zero value, negative, false positive Non-FAMP and FCP values. For example, there are instances in which VA rules require the establishment of a $.01 FCP. Such “penny pricing,” if incorporated into a voluntary rebate calculation, could result in perverse or unfair rebates. Because the Proposed Rule incorporates (and relies heavily upon) the underlying VHCA calculations, input from VA (and manufacturers) is essential in order to establish clear rules for dealing with such special Non-FAMPs and FCPs.

Finally, although the Proposed Rule states that the voluntary rebate calculation will be computed as the difference between an NDC-11’s “most recent” annual Non-FAMP and FCP, the proposed language is imprecise as to which Non-FAMPs and FCPs will serve as the basis of the voluntary rebate calculation. Clarification is needed from DoD and VA as to which Non-FAMPs and FCPs should be used for a given rebate computation. Specifically, should manufacturers use the Non-FAMPs and FCPs in effect at the time the utilization occurred or the time at which a manufacturer calculated its rebate obligation? In the fourth quarter of a given year, is the “most recent” annual Non-FAMP intended to be the annual Non-FAMP established in the third quarter of the prior year or the calculation submitted to the VA on November 15 of the current year?

The Section contends that the VA must offer its guidance on these open calculation questions. Although DoD has referenced past guidance regarding these calculations previously crafted by VA and included in the various iterations of DoD’s Process and Procedures Guide, no guidance has been provided by VA since
enactment of Section 703 of the FY08 NDAA or the issuance of the Proposed Rule. Given that the Section 703 program is separate and differs in many important respects from the 2004 TRRx program announced under the VA’s Dear Manufacturer Letter, it is imperative that DoD work with VA to communicate the specifics regarding the new program and obtain from VA clear guidance regarding application of VHCA requirements in light of the Section 703 program.

B. CMS Calculations

The Section also urges DoD to consider the uncertainties in the Proposed Rule associated with the treatment of Section 703 utilization and rebates for purposes of calculating Federal prices required under health care programs administered by CMS), specifically, AMP, best price and average sales price ASP. Specifically, DoD should recognize that CMS must weigh in to confirm the following: (i) in best price, that utilization and rebates will not be used in the determination of best price; (ii) in AMP, that utilization will be included at wholesale acquisition cost (WAC) and rebates will not included in the calculation; and (iii) in ASP, that utilization will be treated similarly to any other best price-exempt utilization. As with the VA calculations, the Section urges DoD and CMS to ensure that all departures from existing practice with respect to these calculations are made on a prospective basis only to avoid the disorder and confusion associated with an entire industry restating its past calculations for several quarters or years. The Section addresses each of these calculations and basis for this treatment in more detail below.

1. Best Price

   The Medicaid drug rebate statute excludes from best price “any prices charged on or after October 1, 1992, to ... the Department of Defense.”\footnote{Social Security Act (SSA) § 1927(c)(1)(C)(i).} Consistent with the statute, CMS issued a final rule on July 17, 2007\footnote{72 Fed. Reg. 39,142 (July 17, 2007) (“CMS Final Rule”).} that also excludes from best price “[a]ny prices on or after October 1, 1992, charged to ... the DoD.”\footnote{42 C.F.R. § 447.505(d)(1).} Based on the statute and regulation, the Section believes that Section 703 utilization and rebates should be excluded from best price as a price charged to DoD; nevertheless, only CMS can offer the definitive guidance regarding the proper treatment of utilization and rebates.
2. AMP

With regard to AMP, the CMS Final Rule directs that "[s]ales of drugs reimbursed by third party payers including the . . . TRICARE Retail Pharmacy Program (TRRx)" are included in the AMP calculation. The discounts associated with these sales are excluded from AMP. This treatment is consistent with the treatment of sales and discounts to other third party payers, as CMS explained in the preamble to the CMS Final Rule:

[W]e recognize that TRICARE, like the Medicaid Program, is a third-party governmental payer that does not directly purchase drugs from manufacturers. After considering the comments received, we agree that TRICARE sales, as well as sales to SPAPS, PDPs and MA-PDs under the Medicare Part D Program should be treated in the same manner as Medicaid sales to the extent that such sale has occurred through the retail pharmacy class of trade. That is, sales of drugs to pharmacies that are reimbursed by these programs are included in AMP, but we have revised our policy and provide in this final rule at § 447.504(h)(23) that associated discounts, rebates, or other price concessions to these programs are excluded from AMP.

The Section believes that, consistent with CMS's past guidance, manufacturers should treat TRICARE retail pharmacy utilization in the same manner as other third party payer utilization and include it in the AMP calculation at WAC.

The Section, however, directs DoD's attention to the precise language of Section 703:

With respect to any prescription filled on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent

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22 42 C.F.R. § 447.504(g)(15).

necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.24

This language could be read to mean that TRICARE retail pharmacy utilization should be treated as a sale to DoD as an actual possession-taker, rather than third-party payer utilization. Sales to DoD where it acts as a purchaser, which are distinct from sales of drugs reimbursed by DoD as a third-party payer, are excluded from the AMP calculation.25

Such uncertainty highlights the critical need for input from CMS regarding the ultimate treatment of the Section 703 program in AMP, i.e., whether manufacturers should (i) continue to include TRRx utilization at AMP at WAC in accordance with the CMS Final Rule and in line with other third-party payer utilization or (ii) exclude the utilization from AMP as DoD purchases.

3. ASP

The ASP calculation excludes “[s]ales exempt from the inclusion in the determination of ‘best price’ under Section 1927(c)(1)(C)(i)” of the Social Security Act.26 As discussed above, Section 1927(c)(1)(C)(i) excludes prices charged to DoD from best price. Accordingly, the Section believes that FY08 NDAA § 703 utilization and associated discounts should be treated consistently with other best price-exempt utilization in the ASP calculation. Again, however, CMS must offer definitive guidance to industry regarding the proper treatment for purposes of ASP.

IV. CONCLUSION

The Section supports DoD’s proposal to implement Section 703 of the FY08 NDAA through voluntary agreements with pharmaceutical manufacturers. The Section believes, however, that DoD should revise the Proposed Rule, as set forth above, and consult with the VA and CMS regarding its implementation prior to issuing a final rule.

26 SSA § 1847A(c)(2)(A).
The Section appreciates the opportunity to provide these comments and is available to provide additional information or assistance as you may require.

Sincerely,

Michael W. Mutek
Chair, Section of Public Contract Law

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