

National Community Pharmacists Association (NCPA)

Government Affairs Update - Week Ending March 4, 2011

LEGISLATIVE

House and Senate Spending Bill (CR)

- The House and Senate both passed a measure to fund the government through March 18 and to cut spending by \$4 billion in that time period. President Obama signed it into law later on Wednesday. There were no specific cuts to pharmacy. Its passage, however, only postpones a potential partisan showdown over spending priorities.
- Sometime this spring, the government will hit its \$14.3 trillion debt limit. Unless Congress raises it, Washington then will be unable to borrow. In addition, by Oct. 1, lawmakers will have to adopt a fiscal 2012 budget, at least a temporary one. Each deadline poses risks of a government shutdown.

IRS 1099 Expanded Tax Requirement Repealed by House:

- The House passed H.R. 4, the Small Business Paperwork Mandate Elimination Act of 2011 on Thursday March 3rd by a vote of 314-112 (238 Republicans and 76 Democrats)
- Senate passed an amendment which repeals the 1099 provision in the FAA reauthorization bill several weeks ago so it's unclear how this issue will be reconciled. The House will either have to pass the FAA bill or the Senate must pass H.R. 4-will keep you updated on any developments.
- Should the new filing requirements be implemented next year, community pharmacies could be forced to file as many as 200 additional 1099 forms per year.

House Introduces MTM bill:

- Reps. McMorris Rodgers (R-WA) and Ross (D-AR) introduced H.R. 891, the Medication Therapy Management Expanded Benefits Act of 2011.
- The House legislation differs from the Senate version as it requires a licensed pharmacist for the initial MTM review as well as for the targeted quarterly MTM reviews. The Hagan bill does not specifically require a licensed pharmacist.
- This was a victory for us because they were originally set to introduce the Senate version.

House Short Cycle Dispensing Letter

- NCPA is currently working with Rep. Roskam (R-IL), a Member of Ways and Means, on a letter urging CMS to delay implementation of a provision of PPACA which would limit dispensing of brand-name drugs to quantities of seven days or less, commonly referred to as short-cycle dispensing.

- We are lobbying other Members of Ways and Means to sign the letter. The current deadline is March 8th.
- We will begin focusing on a Senate letter next week. Senator Wyden is interested in taking the lead.

Interchange Fees Letter and Durbin Amendment

- Last fall, Congress passed sweeping financial reform legislation covering many areas of banking and investing. The law includes language offered by Senate Majority Whip Richard Durbin (D-IL) (“the Durbin Amendment”) that calls for a limitation on the amount of interchange (or swipe) fees that banks could charge on debit card transactions.
- Debit and credit card interchange fees currently total close to \$50 billion annually for retailers.
- In a nutshell, the Durbin Amendment requires the fees on debit card transactions to be “reasonable and proportional” to the cost of providing the service to merchants. The Federal Reserve was charged with writing regulations for implementation of the Durbin Amendment, and they have completed their draft regulations, and the comment period is now closed.
- Recently, the banks and credit card associations have begun a “full-court press” to slow the rule-making process down, or to have the Durbin Amendment repealed.
- NCPA and NACDS are sending a joint letter to House and Senate Members in support of allowing the Fed to finalize the rule on the Durbin Amendment and to stay within the timeframe required by the law.

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REGULATORY

Federal:

- NCPA submitted comments to AHRQ regarding an *Initial Core Set of Health Quality Measures for Medicaid-Eligible Adults*. Our comments focused on the importance of reporting of health quality measures in the Medicaid program and how pharmacists can be effective partners in effort to identify and address ways to improve patient care. We recommended that the finalized list of measures be restricted to high-priority measures that pertain to prevalent conditions in the adult Medicaid population.
- NCPA talked to the CMS Medicaid Pharmacy Team this week regarding their plans for the RSP survey and AMP rule. CMS is working through the RSP contractor (not yet chosen) to gather AAC data at a national level and house a central repository. CMS stressed that replying to the survey would be optional as there is no legal authority to comply. To that end, CMS is about ready to select a contractor for the RSP survey and Part 1 of the SOW focuses on retail price survey – which was awarded several years ago to IMS but held up due to our litigation and never released. Part 2 of the SOW focuses on ingredient cost data i.e. AAC’s and CMS will look to gather this info from all 50 states and DC. Importantly, CMS will not accept a SPA that only looks at ingredient costs – there must be a commensurate dispensing fee. After the RSP contract is awarded CMS will bring together a stakeholder group to provide technical advice and oversight.

This group will include representatives from NCPA, NACDS, NASPA, the 3 big wholesalers, and the compendia companies (FDB, MS and Red Book). The AMP NPRM should be through clearance and out for public inspection in the April timeframe.

340B Info:

- NCPA was interviewed by GAO regarding GAO's upcoming study of the 340B program. Presently, their study focuses almost entirely upon whether 340B entities have sufficient access to 340B drugs and whether the program should be expanded more. We raised our concerns about the negative impact of the program on small business community pharmacy because of how the broad 340B patient definition allows 340B entities to lure insured patients away from community pharmacies.
- NCPA participated in a coalition meeting of groups interested in reforming the 340B program. Other coalition members include the chain drug stores, manufacturers and distributors. At the meeting, the group outlined its general plans for the future, including trying to influence the Hill to redirect the focus of the GAO 340B study, to meet with OMB to influence the pending HRSA regulation, which likely changes the 340B patient definition, sponsoring studies on the negative impacts of the existing 340B program and influencing the Hill to make legislative changes to the 340B program.
- NCPA attended a webinar hosted by SNHPA regarding 340B. SNHPA's focus was upon avoiding duplicate discounts in 340B, state recoupment efforts where duplicate discounts occur, whether 340B entities can sue manufacturers for overcharges, the exclusion of orphan drugs from 340B, influencing the GAO report, the 340B patient definition and expanded opportunities for contract pharmacies. Of most interest was the discussion on duplicate discounts. In the process of describing how to avoid duplicate discounts, SNHPA made apparent its heavy focus on profits. SNHPA discussed three options for avoiding duplicate discounts for Medicaid patients. In outlining these three options SNHPA was very open about its interest in pushing state Medicaid agencies to share the 340B savings with 340B entities, so that the 340B entities could make more profits.

NCPA submitted comments on the draft Part D Call Letter for 2012. NCPA focused its comments on:

- Highlighting the patient access concerns about bundling ESRD drugs into a bundled payment system
- Concerns about the costs and operational difficulties of verifying prescriber identifiers on Part D claims
- The need for real time eligibility files if CMS intends to strongly enforce non-payment under Part D for hospice medications
- Encouraging the use of MTM measures to develop plan ratings
- Raising concerns about the disruption involved in potentially allowing patients to change Part D plans to a 5 star plan at anytime during the year
- Encouraging expansion of MTM to include more racial minorities

- Seeking clarification that meaningful differences requirements do not apply to the acquisition of a new line of business during a plan year, and
- Encouraging CMS to maintain the \$600 threshold for drugs on the specialty tier.

OIG released a report regarding errors by suppliers in meeting documentation requirements for submitting claims for diabetic testing supplies.

This report focused on DME MAC Jurisdiction B. The report demonstrated a higher rate of errors than a similar report last summer involving DME MAC Jurisdiction A. In DME MAC Jurisdiction B, out of 100 high utilization claims, 83 were not supported by documentation requirements. Last summer's report on Jurisdiction A demonstrated that 70 out of 100 claims were not supported by documentation requirements. We are including the information, along with a reminder to members to follow documentation requirements, in next week's e-news.

CMS responded to NCPA's request to verify that pharmacists will receive Medicare reimbursement for DSMT, even when pharmacists are not providing DSMT services as part of a team. CMS is making the requested change and informing contractors to process claims submitted by pharmacists providing DSMT services in a solo environment.

NCPA signed onto a letter with DACC to CMS regarding a recent proposed change to the Medicare Advantage Manual. CMS intends to allow MA plans to limit the brands of DME drugs and/or supplies that network DME suppliers must supply. NCPA and DACC are focusing on the negative patient access impacts of such a change.

State:

- Met with Executive Director of the Louisiana Independent Pharmacy Association to discuss a number of legislative and regulatory concerns.
- Drafted a document entitled "NCPA AAC Principles/Best Practices" that attempts to detail the factors that need to be considered when contemplating a switch to the AAC pharmacy reimbursement benchmark—specifically from the perspective of independent pharmacy.
- Attended National Conference of Insurance Legislators meeting. This group is comprised of state legislators from virtually every state that has an interest in or jurisdiction over insurance legislation in their state legislature. This group is addressing the timely issue of federal health care reform implementation in the states as well as their role and interaction with NAIC (the National Association of Insurance Commissioners).

Research:

- The 2011 digest survey is ready to go live. The flow of the survey has improved, and while new questions were added, the 2011 survey is shorter than the 2010 survey. Fax and email advertisements will begin on Tuesday, March 8. The survey will go live on Tuesday, March 15. The next step is to put together a strategy to improve the response rate from last year's 418 to a minimum of 600. As part of this strategy, I will reach out to pharmacy owners with more than one store, stressing the importance of providing survey

responses for each of their stores. I am also putting together a strategy for the profile section of the 2011 digest. I plan on profiling a pharmacy that has a successful adherence program, and profiling one or two pharmacies that have successful MTM programs. A profile or two of patients who are happy with their community pharmacy services will also be included. The theme is to show how community pharmacy has successfully adjusted to the changing landscape.

- We are working on an economic impact study of the 340B program on community pharmacy. Highlights will be used at the NCPA meeting with OIRA on Friday, March 11.

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