

# **National Community Pharmacists Association (NCPA)**

## **Government Affairs Update - Week Ending November 20th, 2010**

Congress came to town this past week for a one-week lame duck session. This is the first time all the Members have been back together since the election. In January, when the new Congress convenes, At this time, it looks like there will be 53 Senators in the Democratic caucus, and 47 Senators in the Republican caucus, a pickup of 6 seats for the Republicans. In the House, there are a few undecided races, but the Republicans look like they have picked up at least 61 seats – giving the Republicans approximately 240 seats and the Democrats about 190 or so. The new Congress will be sworn in early in January, but the current Congress will be back for its last few weeks of action on November 29<sup>th</sup>.

**NCPA Meets with CMS on Humana Wal-Mart Part D Plan:** NCPA senior staff met with the Federal head of the Medicare program and his team to talk about community pharmacy's concerns with the Humana-Wal-Mart Part D plan. NCPA focused its concerns on the adequacy of the plan's formulary, given the plan's extremely low premium, as well as the overly restrictive nature of the pharmacy network. Only Wal-Mart pharmacies are preferred pharmacies in the plan, which make up fewer than 7% of all pharmacies. We also brought to their attention concerns relating to some of the plan's marketing tactics, and reinforced the fact that current CMS guidelines does not permit the "Wal-Mart" name to appear on the beneficiary's identification card. The meeting involved a frank exchange of views, and we hope to continue to work with CMS on raising concerns that we have with this plan as well as other Part D plans.

**NCPA Meets with FTC Commissioner Brill:** NCPA met with new Federal Trade Commissioner Julie Brill this week to talk about PBM related issues as well as ways to enhance the ability of independent pharmacies to provide pharmacy services under new evolving integrated care models, such as medical homes and accountable care organizations. Commissioner Brill has been active on PBM issues in her past, most notably as Assistant Attorney General for Consumer Protection for the state of Vermont.

**Judiciary Committee Holds Hearing on DEA Administrator Nomination:** NCPA worked closely with the staff of the Senate Judiciary Committee to prepare Senators on community pharmacy DEA related issues. That is because Acting DEA Administrator Leonhart came before the Committee this past week for her official nomination hearing after having led the agency in an interim role for three years. Some of the questions to her focused on the agency's actions relating to the "nurse as agent" issue in the prescribing and dispensing of controlled substances in long term care facilities. Other questions focused on the current status of e-prescribing for controlled substances. We will continue to work with the Committee and the DEA on the issues of drug disposal, e-prescribing, and nurse as agent, among others.

**NCPA Supports Elimination of New 1099 Tax Requirements:** NCPA expects the Senate to act after Thanksgiving on a full repeal of the IRS 1099 tax reporting requirements. Senator

Baucus (D-MT) and Senator Johanns (R-NE) have both offered bill that would fully repeal the expanded 1099 form requirements. The provision would require small businesses to provide a 1099 form to any entity from which they purchase more than \$600 in goods and services, starting in 2012.

**OIG Report highlights PBM flaws:** HHS Office of Inspector General issued a report which claims that PBMs lower drug prices through pharmacy “negotiations”, but fail to pass along all savings. It implicitly reinforces critics’ charges that those discounts are not always transparent or passed on to beneficiaries. “Prior to this review, little information was available about pharmacy discounts,” the OIG said in a memo accompanying its findings.

Five of the six sponsors and PBMs surveyed did not pass on their savings to beneficiaries or the government, according to the OIG report. Those five PBMs used “lock-in pricing,” in which the plan sponsor pays the PBM a fixed amount and the PBM then negotiates prices with pharmacies. The lock-in price, rather than the subsequently negotiated discount, was used to determine beneficiaries’ and CMS’ share of the total drug costs. “Because lock-in prices tend to be higher than the actual pharmacy discounts negotiated by PBMs, this pricing method increases the overall cost of these drugs for beneficiaries and the Government,” the report states.

**NCPA Supports New FTC Red Flags Rule Modification Legislation:** NCPA signed a health care coalition letter to Senators Thune (R-SD) and Begich (D-AK) supporting their legislation amending the Fair Credit Reporting Act regarding the applicability of identity theft (Red Flags) guidelines to creditors. We expect the Senate to pass this legislation the week after Thanksgiving which would then trigger House-action.

NCPA worked closely with Senators Dodd (D-CT) and Thune to eliminate community pharmacies, among others, from a burdensome Federal Trade Commission rule meant to reduce identity theft. In an effort to combat identity theft, the FTC along with 6 other agencies issued regulations known as “Red Flags Rule”. The Rule is geared toward financial institutions and any other “creditor” that use covered accounts, or extend credit, requiring such entities to develop and implement ID theft programs. This new legislation would exempt small pharmacies and other similar businesses from the Red Flags Rule. We expect that this proposal could pass both chambers during the lame duck session, before the December 31 implementation deadline by the FTC.

**NCPA Supports Modifications to OTC/FSA Requirements:** NCPA signed a coalition letter urging House and Senate Leadership to repeal or delay provisions in the healthcare reform law that limit purchases of OTC medicines for patients relying on flexible spending arrangement (FSA) to prescribed OTCs only. Effective January 1, 2011, over-the-counter medicine or drugs cannot be reimbursed from the account unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. The new standard applies only to purchases made on or after Jan. 1, 2011, so claims for medicines or drugs purchased without a prescription in 2010 can still be reimbursed in 2011, if allowed by the employer’s plan.

**NCPA Comments on New Medicare and Medicaid Program Integrity Requirements:** This week NCPA submitted comments on CMS's proposed rule to implement provisions of the Affordable Care Act concerning new requirements for fraud, waste and abuse prevention in Medicare, Medicaid and CHIP. NCPA commented on a number of issues proposed in the regulation that would create new requirements on providers to try and reduce fraud, waste and abuse in these two programs.

**Update on Medicare DME Issues:**

*Pharmacy Accreditation Exemption Attestation:* CMS released the DME pharmacy accreditation exemption attestation form this week. Unaccredited pharmacies that meet the criteria to be exempt from accreditation should return the form to the National Supplier Clearinghouse (NSC) before January 1, 2011 in order to continue to provide DME. Eligible pharmacies are those who have been enrolled in the Medicare DME program for the past 5 years without any adverse actions against their enrollment, and whose Medicare DME billings as a percentage of total sales over the last three years are 5% or less. Pharmacies that are not accredited by that time, or have not returned an attestation, cannot continue to provide DME. The form is posted on the National Supplier Clearinghouse's website as well as the NCPA website.

*NCPA Talks with CMS and Members of Congress about Inability to Deliver Diabetes Supplies:* This week NCPA approached Members of Congress to send a letter to CMS requesting that CMS allow independent community pharmacists to continue to provide home delivery of diabetic testing supplies to homebound Medicare beneficiaries. CMS's recent Final Rule exempts independent community pharmacies from the National Mail Order Competitive Bidding Program, but prohibits them from delivering diabetic testing supplies to homebound Medicare beneficiaries unless the pharmacy is a winning contractor under the competitive bidding program. NCPA also raised these concerns with the head of the Federal Medicare program as part of our meeting this week with him. NCPA is also following potential cuts to Medicare DME as a way to pay for the \$17 billion Medicare physician payment fix that Congress is going to consider when it returns later this month. NCPA will oppose such cuts because they could reduce the ability of Medicare beneficiaries to obtain diabetes supplies from their community pharmacies.

**FDA Announces Propoxyphene Withdrawal:** NCPA monitored a media briefing conducted by the Food and Drug Administration (FDA) regarding the removal of propoxyphene from the U.S. market. Both the manufacturer of the brand name products Darvon and Darvocet as well as the generic manufacturers have voluntarily agreed to withdraw the medication from the market at the request of the FDA. FDA called for propoxyphene's market removal because of data from a new clinical trial showing significant changes to the electrical activity of the heart which increase the risk of serious or even fatal abnormal heart rhythms. These changes in electrical activity were noted at standard therapeutic doses and disappear once the drug is discontinued. FDA is advising that health care professionals stop prescribing propoxyphene and that patients contact

their prescribers to discuss other therapeutic options. Propoxyphene, first approved in 1957 and prescribed for approximately 10 million people in 2009, is an opioid used to treat mild to moderate pain.

**NCPA Attends FDA's Safe Use Initiative:** This week NCPA attended the FDA's public workshop on the Safe Use Initiative. This workshop focused on developing collaborative, cross-sector safe medication use activities with health care stakeholders on topics such as reducing unintended acetaminophen overdose, safe use of pain medications in older adults, reducing unintended overdoses of OTC medications in children, and safe use and prescribing of opioids.

**Political Activities:** With current and incoming Members of Congress in town this week for orientation, NCPA staff attended several political events to introduce ourselves and our issues to these new Members. We attended the National Republican Congressional Committee event for incoming Republican Members of Congress, and the Democratic Congressional Campaign Committee event for the newly-elected House Democratic Leadership for the next Congress. Staff also attended political events for Incoming Chairman of the House Armed Services Committee Buck McKeon (R-CA), House Energy and Commerce Health Subcommittee Member Ed Whitfield (R-KY), and Senator Sherrod Brown (D-OH).

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