

## **National Community Pharmacists Association (NCPA) Government Affairs Update - Week Ending December 18, 2010**

The House and Senate are wrapping up Congressional business for the 111<sup>th</sup> Congress in the December lame duck session. One important victory for community pharmacy has been achieved - enactment of several important tax changes for 2011 and beyond. We also may be on the cusp of victory - another one year prohibition on TRICARE prescription copay increases.

**President Signs Extension of Tax Cuts:** On Friday, the President signed a historic \$858 billion tax cut extension and reform bill that will have significant impact on community pharmacies and their employees. A summary of the provisions of the bill, compliments of NFIB, is provided below:

- *All expiring lower income tax rates from 2001 and 2003 will be extended. This means no small business owner will see their individual taxes go up next year. It also means that lower capital gains and dividend rates will remain in place. These are two year extensions.*
- *The Estate Tax will not go back to a 55% rate with a low \$1 million exemption. Instead, small business owners can plan for a two year estate tax of 35% and a \$5 million per spouse exemption.*
- *The Alternative Minimum Tax is patched for two years, so 26 million taxpayers will be protected from this tax increase.*
- *100% deduction for qualified business investments in 2011. This builds on the generous expensing provisions included in the Small Business Jobs Act that included a \$500,000 limit for qualified equipment and up to \$250,000 in renovations (a completely new change to the expensing law). Bottom line – just about every small business can write-off the full amount of investments they want to make in 2010 and 2011.*
- *In addition, for 2012 the expensing limit will be \$125,000 instead of falling to \$25,000.*
- *Every worker (including small business owners) in America will see a 2% cut in their Social Security payroll tax for 2011. For example, a worker making \$40,000 will pay \$800 less in payroll taxes.*

Please contact NCPA if you want further details on the implications of the tax cuts on small businesses.

**Freeze for DOD TRICARE Rx Copays:** The National Defense Authorization Act for FY2011 prohibits the Department of Defense from increase TRICARE retail pharmacy copayments through September 2011. The current copayments are \$3 for a generic drug; \$9 for a formulary brand; and \$22 for a non-formulary brand. As of Friday, the House has passed the bill, and it was expected to be taken up by the Senate before adjournment next week. Without this prohibition, the Department could change copays to greater encourage the use of the TRICARE mail order pharmacy.

**NCPA Meets with MAC PAC:** NCPA met with the new staff of the Medicaid and CHIP Payment and Access Commission this past week. MACPAC is a Congressionally-chartered, independent agency responsible for making recommendations to Congress on payment policies for Medicaid, including the prescription drug program. While MAC PAC is just getting set up, we wanted the Commission to understand independent community pharmacy's views on current issues in Medicaid reimbursement, including the impact of changing reimbursement benchmarks, costs of dispensing prescriptions, and 340B program participation.

**NCPA Legislative Conference Date Change:** Please take note that the dates of the 2011 NCPA Legislative Conference in Washington D.C., have been moved from May 17-19<sup>th</sup> to May 23-25<sup>th</sup>. As usual, it will be held at the Hyatt Regency Capitol Hill. Look for more information soon on the NCPA website.

**GAO Report on FULs for Generics:** The U.S. Government Accountability Office (GAO) released a report on Friday, requested by outgoing House Energy and Commerce Committee Chairman Henry Waxman (D-CA), which determined that the new AMP-based FULs enacted under the 2010 health care reform law are 35 percent higher than pharmacy acquisition costs. These FULs will pay pharmacies at at least 175% of weighted average AMP for the particular multiple source drug. Previous GAO reports had found that AMP-based FULs enacted under the 2005 DRA law (i.e. 250% of the lowest AMP) would underpay pharmacies on average by 36 percent. While this new report provides some welcome relief to pharmacies, the fact is that many states set MACs at rates that are lower than FULs and any difference that may exist between the reimbursement and the pharmacy acquisition cost often helps to offset inadequate state Medicaid dispensing fees. Waxman said the report showed that, as a result of the changes made in health reform to FULs, *'The law averted massive payment cuts to pharmacists for generic drugs under Medicaid, and did so in a responsible way for taxpayers.'*

**Medicaid AMP Injunction Lifted:** This week, NCPA along with NACDS agreed with the Centers for Medicare and Medicaid Services (CMS) to lift the 3-year injunction on the Medicaid AMP regulation. This injunction has helped to avert billions of dollars in unjustified Medicaid generic drug reimbursement reductions to community pharmacies. The lifting of this injunction, however, clears the way for CMS to eventually release new FULs based on 175% of the weighted average AMP, as well as post weighted average AMP data on a CMS website. While the timing of this is not clear, it is possible that we could see new FULs sometime in the new year.

**Summary of CMS Updates for 2011:** Here's a reminder to pharmacies about some important changes happening in the Medicare program in a few short weeks:

**Timely Claims Filing Deadline:** For providers and suppliers submitting claims to Medicare for payment, effective immediately, all claims for services furnished on or after Jan 1, 2010, must be filed with the appropriate Medicare contractor no later than one calendar year (12 months) from the date of service – or Medicare will deny them. For Medicare Fee-For-Service claims with service dates from Oct 1, 2009, through Dec 31, 2009, those claims MUST be filed by Dec 31, 2010, or Medicare will deny them. Claims with service dates from Jan 1, 2009, to Oct 1, 2009, keep their original Dec 31, 2010 deadline for filing.

**Part B Copays:** Effective January 3, 2011, Part B co-pays, coinsurance and deductibles are waived for pneumonia, flu and hepatitis B vaccines and administration. However, the co-pays, coinsurance and deductibles are not waived for Diabetes Self Management and Training.

**New TrOOP Facilitator:** CMS announced upgrades to the CMS TrOOP Facilitator. The TrOOP Facilitation contractor will implement new matching logic for the Medicare eligibility query (E1) to identify a Medicare beneficiary's Plan enrollment information. Effective January 1, 2011, pharmacists MUST include at a minimum the following patient information in the E1 request for a match to occur:

1. Cardholder ID, which can be any one of the following:
  - a. Medicare Part A/B ID Card Number;
  - b. Nine-digit Social Security Number (SSN);
  - c. Railroad Retirement Board (RRB) number; or
  - d. Last four digits of the SSN;
2. Patient Last Name;
3. At least the first character of the Patient First Name;
4. Patient Date of Birth.

If all required information is not provided, the E1 response will be "Missing Required Field" even if the submitted Cardholder ID information is correct.

**Non-Matched Drug List:** CMS posted an update to the CY2011 Non-matched NDC list to reflect the newest FDA NDC Directory listings. CMS will use this updated list to implement PDE reject edits for dates of service beginning January 1, 2011. CMS expects Part D sponsors to rely on the monthly updates to the FDA NDC Directory to determine when NDCs get listed and not wait for CMS to update the Non-matched NDC list.

**NCPA Participates in CMS Multiple Chronic Conditions Program Call:** This week, NCPA participated in a conference call regarding CMS initiatives to enhance treatment of patients with multiple chronic conditions. CMS provided an overview of its new Centers for Medicare and Medicaid Innovation and its new Federally Coordinated Health Care Office for Dual Eligibles as the main tools for reaching out to and providing more effective treatment for patients with multiple chronic conditions. CMS representatives were specifically asked about how pharmacists will be included in the new Medical Home and Accountable Care Organization

programs. CMS representatives noted that HRSA has an ongoing patient safety and pharmacy collaborative that will involve pharmacies. CMS representatives also discussed the fact that CMI will be working on new delivery systems and payment models. These efforts will include developing new relationships and new ways of operating, including bringing pharmacists into the primary care system and supporting them through payment. CMS representatives encouraged pharmacists to share ideas with CMI. CMS representatives also noted that state Medicaid programs are presently thinking about new partnerships with pharmacists.

**NCPA Interacts with CMS on Medicare Part B Audits:** This week NCPA participated on a call with CMS regarding problems that pharmacists in some states are facing in Part B audit recoupments. More specifically, pharmacists are billing DME products and services to Part B, only later to find out that the product or service should have been billed to home health, hospice or Medicare Advantage due to the fact the eligibility file to which the pharmacist had access was not up to date. CMS agreed that this is a major problem and that pharmacists should get paid for their providing the product and/or service. CMS and NCPA are discussing several options to determine how this situation can be avoided in the future.

**NCPA Engages on State Therapeutic Shoe Bills:** NCPA held conference call with representatives from Dr. Comfort to develop strategies to oppose legislative efforts currently underway that would preclude pharmacists' ability to dispense diabetic shoes. Strategies will focus on working through state pharmacy practice acts to assure that pharmacies can continue to provide this important service to patients with diabetes.

**112<sup>th</sup> Congress Committees Continue to Take Shape:** This past week, House Energy and Commerce Committee Republican leadership came more into focus. Congresswoman Sue Myrick (R-NC) will take over as Vice Chair of the Committee. Congressman Joe Pitts (R-PA) is the new Chairman of the Health Subcommittee and Congressman Mike Burgess (R-TX) is the Vice Chair. Congressman Fred Upton (R-MI) will Chair the full Committee. We look forward to working with all of these Members in the next Congress.

This will be the last update for 2010! See you in 2011. Happy Holidays! Thanks for all your help in 2010

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*The National Community Pharmacists Association (NCPA®) represents America's community pharmacists, including the owners of more than 22,700 community pharmacies, pharmacy franchises, and chains. Together they represent an \$88 billion health-care marketplace, employ over 65,000 pharmacists, and dispense over 40% of all retail prescriptions.*