

National Community Pharmacists Association (NCPA)

Government Affairs Update - Week Ending December 11th, 2010

Congress is heading into its last full week of the year, and several major issues remain unresolved, including potential extension of the Bush-era tax cuts, as well as the Defense Authorization bill.

NCPA Continues to Push Freeze for DOD TRICARE Rx Copays: The Senate was unable to obtain the 60 votes needed for consideration of the 2011 Department of Defense Authorization bill, primarily because of the controversy surrounding the “don’t ask, don’t tell” issue. There is a chance that the Senate will vote separately on that issue apart from the DOD bill, which could allow the Senate to act on the full DOD bill. NCPA has been working with the Senate to get a direct prohibition in the Defense Authorization Bill on the ability of the DOD to increase TRICARE prescription copays. The House’s bill includes language prohibiting the DOD from increasing the prescription copays. Without a prohibition, the DOD could attempt to change copays to increase incentives for TRICARE enrollees to use mail order. NCPA was assured by Senator Lautenberg’s (D-NJ) office that he intends to offer his Sense of the Senate language supports no copayment changes and that he will support a straight prohibition as well during a conference between both chambers.

NCPA-supported Legislation Exempts Pharmacies from Onerous FTC Red Flags Rule: The U.S. House of Representatives voted to approve NCPA-supported legislation passed by the Senate last week to remove pharmacists from the scope of the Federal Trade Commission (FTC) “Red Flags” rule. The FTC, along with six other agencies, issued regulations known as the “Red Flags” Rule. It is geared toward financial institutions and other creditors, requiring such entities to develop and implement identity theft prevention and detection programs. Senators Mark Begich (D-Alaska) and John Thune (R-S.D.) authored bipartisan legislation (S. 3987) - with the support of Senators Chris Dodd (D-Conn.), Richard Shelby (R-Ala.) and the FTC - to exempt many small businesses. In recent months, NCPA worked with the Senators’ offices to ensure that community pharmacies would be exempted from the requirements of the rule.

Senate Fails to Eliminate New 1099 Requirements: This week, the Senate failed to act on a repeal of the new 1099 IRS reporting requirements for small businesses, which are supposed to go into effect in 2012. The Senate is still expected to reconsider the 1099 repeal later next week, possibly during consideration of the extension of the Bush-era tax cuts. NCPA supports the repeal.

NCPA Submits Comments on “Essential Benefits Package”: NCPA submitted comments this week to the Institute of Medicine (IOM) on what should be included in an “essential health benefits package” as envisioned under the Affordable Care Act. Prescription drugs are already

covered under the package. However, NCPA comments advocate for the inclusion of pharmacy services—not limited to simply the dispensing of medications.

NCPA Meets with Center for Medicare and Medicaid Innovation: This week, NCPA along with APhA and the Pharmacy Quality Alliance (PQA) met with the staff of the new Center for Medicare and Medicaid Innovation (CMI). The Center is charged with developing and testing new and innovative models of health care delivery that could be expanded into the general population. We advocated for inclusion of pharmacist delivered medication therapy management services in the new models to be tested – such as medical home and accountable care organizations. We focused discussions on the role of the pharmacist in promoting adherence to medications, as well as on new models of pharmacy payments based on outcomes of care.

Small Business Tax Credits for Health Insurance: This week the IRS released final guidance for small employers eligible to claim the new small business health care tax credit for the 2010 tax year. NCPA released summary of the final guidance, available on the “members only” section of the website. Eligible employers for the tax credit are those who meet the following requirements:

- The business pays at least half of the premiums for single health insurance coverage for its employees. After 2010, for eligibility purposes, the percentage of premiums paid by the employer must be a uniform percentage of not less than 50% per enrolled employee,
- The business has less than 25 full-time equivalent employees for the tax year; and,
- The business paid average annual wages for the tax year of less than \$50,000 per full-time equivalent employee. Note: In some cases someone who is the principal of a pharmacy (owner, partner, shareholder, etc.) and also an employee (such as a staff pharmacist) can exclude their income from the pharmacy’s average annual wage calculation for eligibility purposes.

NCPA Testifies at DOL Hearing on PBM Transparency Requirements: NCPA testified at the December 7 hearing at U.S. Department of Labor, supporting a potential regulation that would require disclosures of direct and indirect sources of revenue as well as any potential conflicts of interest of service providers to ERISA welfare benefit plans. This potential regulation would impact the PBMs that serve the ERISA plans and would require the disclosure of any manufacturer rebates and discounts received by the PBM. NCPA supports this disclosure as a first step toward greater transparency for and regulation of PBMs.

Political Update: This week, NCPA staff attended political events for Incoming House Speaker John Boehner (R-OH), Incoming House Majority Leader Eric Cantor (R-VA), and newly-elected Senator Michael Bennet (D-CO). This week also, the House Republicans made some key decisions on Committee Chairmanships and Committee assignments for the next Congress. Here are some of the highlights, and how this could affect community pharmacy:

House Republican Conference Vice Chairperson Cathy McMorris Rodgers (R-WA): Entering her fourth term in the House of Representatives, she will be in the senior leadership (fifth ranking Republican) of the House Republican Conference. She is also one of the four chairpersons of the Congressional Pharmacy Caucus and a member of the House Armed Services Committee. She is a champion of independent pharmacy, including cosponsor of legislative proposals to pay pharmacies promptly under Medicare Part D, as well as create narrow exemption to antitrust law to allow pharmacies to collectively negotiate contracts with PBMs.

House Freshman Class President: Austin Scott (R-GA): A former Georgia state legislator who sponsored state PBM legislation, he is entering his first term in the House of Representatives and was elected Freshman Class President by his colleagues.

Energy and Commerce Chairman: Fred Upton (R-MI): Entering his 13th term in the House, Fred Upton was just elected to be chairman of the powerful Energy and Commerce Committee with jurisdiction over Medicare Part B, Medicaid, and PBM issues. He is a fairly moderate Republican with a strong focus on energy issues and a good reputation to work across party lines. He has been supportive of independent pharmacy concerns, having cosponsored the pharmacy anti-trust exemption law, as well as Medicare Part D prompt pay legislation.

Energy and Commerce Health Subcommittee Chairman: Joe Pitts (R-PA): During his 8th term in the House, Joe Pitts (R-PA) will serve as the Health Subcommittee Chairman on Energy and Commerce Committee. He represents a fairly rural area and also has served on the Small Business Committee which gives him a unique perspective of the issues facing rural healthcare providers and small businesses. Repealing healthcare reform will be a top priority for his subcommittee, so it's important that pharmacy help him understand which provisions we support (i.e. Medicaid AMP fix, DME accreditation exemption, PBM transparency), and which we would like to see eliminated or modified (i.e. 1099 reporting, FSA changes, 340B changes). He has been supportive of independent pharmacy concerns, having cosponsored the pharmacy anti-trust exemption law, as well as Medicare Part D prompt pay legislation.

Ways and Means Chairman Dave Camp (R-MI): Rep. Dave Camp enters his 11th term in the House as Chairman of the Ways and Means Committee, having served as ranking member since 2008. His committee has jurisdiction over Medicare and tax-related issues. He has cosponsored the Medicare Part D prompt pay legislation as well as legislation that would grant a narrow anti-trust exemption to allow pharmacies to collectively negotiate contracts with PBMs.

Ways and Means Health Subcommittee Chairman: Rep. Wally Herger (R-CA): In his thirteenth term in the House, Wally Herger is the former ranking member of the important Ways and Means Health Subcommittee and will now serve as Chairman. He represents a rural district in California with a strong independent pharmacy presence, and was the first member of Congress to call for CMS to exempt pharmacies from new DME accreditation requirements.

New Committee Additions: This week, several new Republicans were appointed to the powerful Energy and Commerce Committee as well as the House Ways and Means Committee. NCPA members who are in the Congressional districts of these Members should reach out actively to congratulate them and make sure they know about our pro-patient agenda heading into the next Congress.

Newly Appointed Republicans to the House Ways and Means Committee: Rick Berg (ND), Diane Black (TN), Vern Buchanan (FL), Jim Gerlach (PA), Lynn Jenkins (KS), Chris Lee (NY), Erik Paulsen (MN), Tom Price (GA), Aaron Schock (IL), Adrian Smith (NE)

Newly Appointed Republicans to the House Energy and Commerce Committee: Greg Walden (OR), Cathy McMorris Rogers (WA), Pete Olsen (TX), Morgan Griffith (VA), Brian Bilbray (CA), Charlie Bass (NH), Brett Guthrie (KY), Greg Harper (MS), Bill Cassidy (LA), Cory Gardener (CO), Mike Pompeo (KS), Adam Kinzinger (IL), David McKinley (WV)

NCPA will provide updates to the membership of other Senate and House Committees as they become available.

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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.