

National Community Pharmacists Association (NCPA) Government Affairs Update - Week Ending May 15th, 2010

Legislative Conference: NCPA's 2010 legislative conference was held this past week in Washington. By all measures, it was a huge success. There were almost 400 attendees and over 200 meetings between NCPA members and their Members of Congress. There were speakers from important agencies including CMS, DEA, FTC and FDA. We had the Chairman of the House Ways and Means Committee (Levin (D-MI)) and the Ranking Member of the Health Subcommittee (Herger (R-CA)) speak at the conference as well as Senators Cornyn (R-TX), Pryor (D-AR), Harkin (D-IA) and Tester (D-MT).

We also heard from Reps. Emerson (R-MO), Pallone (D-NJ), Weiner (D-NY), Jones (R-NC), Connelly (D-VA), Davis (R-KY), McMorris-Rodgers (R-WA), Doggett (D-TX), Loeb sack (D-IA) and Driehaus (D-OH). We thank all the NCPA members that attended the conference as well as those that couldn't attend, but contacted their Members of Congress by phone or fax.

PBM Reform: The Next Steps: H.R. 5234, the PBM Audit Reform and Transparency Act of 2010 was recently introduced by Reps. Weiner (D-NY) and Moran (R-KS). This legislation expands the new PBM transparency requirements included in the health care reform bill to all plans both public and private plans. It is also the first federal legislation to try and reform PBM's abusive auditing practices. This bill:

- Require PBMs to curb abusive pharmacy audits;
- Prevent PBMs from mandating covered individuals use of a specific pharmacy (retail, mail, specialty) if the PBM has ownership interest in that pharmacy;
- Prohibit a PBM from transmitting personally identifiable utilization/claims data to a pharmacy owned by the PBM unless the patient has chosen to fill that particular prescription at the PBM-owned pharmacy.

We ask all our members to contact their Members of Congress and ask them to cosponsor the bill. We are looking to identify Senate sponsors of this legislation.

DME Accreditation Exemption and Competitive Bidding: H.R. 5235, the Medicare Access to Diabetes Supplies Act was recently introduced by Reps. Welch (D-VT) and Rogers (R-MI). This legislation would exclude diabetic supplies provided by small pharmacies from DME competitive bidding. The bill defines small pharmacies using the SBA definition of \$7 million or less in annual sales. Excluding these supplies from competitive bidding is important for small pharmacies because they will unlikely be able to effectively participate in the competitive bidding program. That will reduce beneficiaries' access to diabetes testing supplies. We believe that CMS will issue guidance on the pharmacy DME accreditation exemption sometime within the next several weeks. This will clarify how CMS will implement the pharmacy exemption which was enacted as part of the health care reform law.

Town Hall Meeting with Medicaid Directors' Association: NCPA and representatives of state pharmacy associations held a town hall meeting this past week at NCPA's legislative conference with representatives of the National Association of State Medicaid Directors (NASMD). We discussed issues relating to the future of Medicaid pharmacy reimbursement, including an

Alabama state plan amendment that would pay pharmacies at average acquisition cost plus a fee that reflects pharmacy's cost of dispensing. We also discussed ways for pharmacists to partner with Medicaid to improve quality of care and reduce costs, short of focusing on reducing pharmacy reimbursement.

TRICARE (Defense bill): The House Armed Services subcommittees have been marking up the 2011 defense authorization bill this week. The full committee markup is scheduled for next week. The good news is that there is nothing that would impact pharmacy (such as incentives to use mail order) in the language right now but we will keep a close eye on the bill as it moves through the committee.

Medicare Part D Donut Hole Discount Program: NCPA submitted comments to CMS regarding the draft guidance implementing the Medicare Coverage Gap Discount Program. Our comments focused on supporting provisions in the guidance related to operating the program through Part D plans at point of sale and requiring Part D sponsors reimburse the pharmacy consistent with current Part D prompt payment requirements. We also strongly supported the draft guidance pertaining to use of the "date of dispensing" ("paid response") for purposes of providing a discount at point-of-sale. This eliminates the potential for retroactive changes in eligibility for purposes of adjusting the discount. We offered suggestions related to a unique identifier that would indicate that a specific claim is a "donut hole" discount claim. We also suggested that CMS give the plans ample time to update their processing systems to reflect specific labeler codes eligible for the discount and suggested that CMS delay submission of Part D drug formularies until model manufacturer agreements on the 50-percent discount are signed for 2011. Lastly, we urged CMS to monitor whether PBMs are using different labeler codes for the same drugs dispensed to patients in ambulatory settings as compared to mail order. Please let us know if you would like a copy of the comments.

Prompt Pay for Part D LTC Claims: We are also working with Members of Congress to introduce legislation that would require Part D plans to pay LTC pharmacy claims promptly - 14 days for clean electronic claims - same as for traditional retail pharmacy claims.

DEA "Nurse as Agent" Issue in LTC Facilities: We are working on a proposal with NABP and other affected stakeholders that would allow the DEA to register LTC facilities so that nurses in the facility can act as agents of physicians for the purpose of transmitting controlled substance prescription to the pharmacy, and chart orders can be recognized as legitimate prescriptions for the purposes of dispensing controlled substances.

John M. Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs
National Community Pharmacists Association
100 Daingerfield Ave
Alexandria, VA 22314

703-683-8200 X184 - office
571-214-3936 - cell
john.coster@ncpanet.org