

**National Community Pharmacists Association (NCPA)
Advocacy Center Update
Week Ending July 22nd, 2011**

—
Please Contact your Members of Congress to support:

**H.R. 1971/S. 1058 (PBM Reform/McMorris Rodgers; Pryor-Moran),
H.R. 1946 (PBM Negotiations/Marino) and
H.R. 1936 (DME/Schock-Welch)**

NCPA Opposed to Proposed PBM Merger (Express Scripts and Medco): This week, Express Scripts (ESI) announced plans to purchase Medco. As a result, the Prescription Benefit Management (PBM) marketplace will become smaller, more consolidated and less competitive. Currently CVS Caremark, Express Scripts and Medco have over 80% of the PBM market for insured lives. This merger could give ESI almost 50% of the PBM market for insured lives, thus reducing competition for consumers.

This merger could have a significant impact on consumers not only in the private marketplace but also in federal programs like Medicare Part D, FEHBP, and TRICARE. Federal and state employee and retiree programs, in particular, should be troubled by this merger. For example, the Medicare Part D drug benefit is built on competition and approving this deal would undermine that foundation. We are currently looking into how many lives would be impacted in the Part D program. At the state level, increasing this market concentration could potentially increase the cost of their state employee and other health plans by significantly decreasing competition. Additionally, this proposed merger comes on the heels of the CVS-Caremark merger which the FTC approved and is now currently investigating.

Over the next few weeks, we will be developing a legislative and regulatory plan to strongly oppose this merger. We will be reaching out to consumer groups, payers, the FTC, Members of Congress, CMS, state legislators, Governors, the small business community and others who should all have concerns about the impact of this merger on consumers, health care costs, competition and small businesses.

Congressman Tom Marino (R-PA), lead sponsor of H.R. 1946 (the collective bargaining bill) released a statement the day the proposed merger was announced expressing his concerns over the merger and stating, “hometown pharmacies are already at a substantial disadvantage when it

comes to negotiating with the PBMs. This merger could worsen the problem and ultimately lead to increased costs and decreased quality of care.”

We will need the active help of all NCPA members to oppose approval of this merger by the FTC!!! Expect materials very soon to help deliver this message.

Debt Limit Negotiations Continue: As of this writing, negotiations continue between Congressional Leaders over a package of cuts and possible revenue raisers that would raise the debt ceiling. The country reaches its debt limit in just over a week, and Medicare and Medicaid programs cuts are still on the table. NCPA sent a letter to all Congressional offices as well as the White House, outlining our concerns with some of the potential proposed reductions affecting pharmacy. These key messages included the following:

- **Reducing Payments for Medicare Diabetes Testing Supplies will Hurt Patients:** Reimbursements for diabetes testing strips are already low and lowering them further could cause many pharmacies to cease to offer these products. Seniors, particularly in rural and urban areas, rely on independent community pharmacists for the diabetic supplies, and in many cases, a community pharmacist is their only opportunity to speak face to face with a pharmacist and obtain necessary counseling to ensure they are properly using their supplies and correctly interpreting results.
- **Medicaid Reductions Could Devastate Patient Care:** State Medicaid programs are already under tremendous financial pressure and we are concerned that taking billions out of Medicaid and CHIP will make a bad situation worse. Steps such as limiting prescriptions, moving to mail order or reducing access to pharmacies will be harmful to Medicaid patients’ health care.
- **Keep TRICARE Military Drug Benefits in Local Pharmacies not Out of State Mail:** Shifting more TRICARE patients to mail order by increasing co-payments for TRICARE beneficiaries who prefer to obtain their prescriptions from a community pharmacy is not the way to save money. Rather than shift patients to wasteful mail order, TRICARE should partner with community pharmacies to increase generic dispensing and to maintain access to community pharmacies for beneficiaries.

IF YOU HAVE NOT DONE SO, PLEASE CALL YOUR SENATORS AND CONGRESSMEN AND PLEASE DELIVER THE MESSAGES ABOVE. THANK YOU!

Senate Aging Committee Releases Plan for Reducing Medicare Costs: This week, the Senate Aging Committee held a hearing on “A Prescription for Savings: Reducing Drug Costs to Medicare”. The Committee Chairman, Senator Herb Kohl (D-WI), released a plan for reducing costs in Medicare which includes NCPA’s endorsed PBM transparency provisions. Two key recommendations affecting community pharmacy are: 1) giving the government and employers

access to transparent PBM data to better manage drug costs, which is also a priority of NCPA; 2) discouraging prescribing of controversial antipsychotic drugs for nursing home residents. The Chairman may seek to include some of these in the debt reduction talks.

Preserving Our Hometown Independent Pharmacies Act of 2011 (HR. 1946): NCPA continues to meet with Members of the Subcommittee on Intellectual Property, Competition, and the Internet, to urge Chairman Goodlatte to hold a hearing and markup of HR.1946 within the committee. The legislation would provide more leverage to independent pharmacies against PBM contracts. We are now circulating letters in the states of Texas and Virginia for pharmacists to sign that urges the Chairman of the Judiciary Committee (Rep. Lamar Smith-TX) and Subcommittee Chairman Goodlatte to support a hearing for this bill. If you live in one of these states please keep on the look-out for the request for a signature. It's important that we have as much support as possible! This week, NCPA as well as representatives of the Association of Community Pharmacies Congressional Network met with Committee staff to talk about the bill and moving it forward. The announced ESI-Medco merger will give new momentum to the bill!

NCPA Met with the Following Congressional Offices: Senator Roger Wicker (R-MS), Senator Bob Corker (R-TN), Senator Mike Crapo (R-ID), Senator Boozman (R-AR), Congressman Pete Sessions (R-TX), Chairman of the National Republican Congressional Committee, Congressman Wally Herger (R-CA), Chairman of Ways and Means Health Subcommittee, Congressman Marino (R-PA.)

OIG Releases Study on State Medicaid Reimbursement Plans: This week the OIG released a study titled "Replacing Average Wholesale Price: Medicaid Drug Payment Policy." The study was conducted to determine how States will set reimbursement for Medicaid prescription drugs after First DataBank stops publishing AWP in September 2011 and to determine the role that States would prefer CMS to play in developing reimbursement methodologies for prescription drugs. Of the 45 States that used AWP to set reimbursement for prescription drugs in the first quarter of 2011, 20 States did not have definitive plans for prescription drug reimbursement after First DataBank stops publishing AWP in September 2011. Of the 45 States with AWP-based reimbursement methodologies, 3 had developed plans to replace AWP with AAC, 12 to replace AWP with WAC, and 10 to use AWP from a source other than First DataBank. Most States (44 of 51) would prefer that CMS develop a single national benchmark to set Medicaid reimbursement rates, and 24 of these States specifically wanted a benchmark based on pharmacy acquisition costs. NCPA will be attending a CMS hosted stakeholder meeting on August 4 to discuss methodologies that Myers and Stauffer will employ for a recently awarded contract to survey retail pharmacy prices and pharmacy drug acquisition cost information.

NCPA Submits Letter to CMS Regarding Oregon Medicaid: NCPA submitted a letter this week to CMS regarding the proposed Oregon State Plan Amendment that would change the thresholds for pharmacy dispensing fee tiers and reduce dispensing fees. The NCPA letter expressed grave concerns about the proposed State Plan Amendment to lower dispensing fees less than a year after CMS granted approval to transition pharmacy reimbursement to AAC, accompanied by an increased dispensing fee. NCPA also recommended that CMS provide official guidance to states regarding both: (1) initial proposals to transition to AAC and the need

for an accompanying increase in pharmacy dispensing fee; and (2) subsequent proposals for a reduction in the pharmacy dispensing fee for states that have already transitioned to AAC.

NCPA Attends NCOIL: NCPA staff attended the National Conference of Insurance Legislators in Newport Rhode Island July 14-17. This organization is comprised of state representatives and state senators that either chair or hold leadership positions on state legislative committees that have jurisdiction over all insurance issues. This group is separate from the National Association of Insurance Commissioners although the two groups do collaborate on many initiatives. The NCOIL meeting included a full day symposium on state insurance exchanges. The symposium included presentations from Joel Ario from CCIIO as well as representatives from the existing Utah and Massachusetts health exchanges. There was also a panel discussion that included updates from some states that have received early innovator grants from the federal government to set up an exchange in their state. All speakers emphasized the fact that technology concerns would be an early challenge as well as ensuring continuity of coverage for those individuals whose eligibility thresholds may vacillate between Medicaid and the state exchange. NCOIL also has a standing committee that focuses exclusively on health insurance related issues. Committee staff indicated that they would be interested in examining PBM-related issues and plans have been made for future discussions between NCOIL staff and NCPA.

NCPA Meets with CMS Office of Program Integrity: NCPA met with the Center for Program Integrity at CMS to discuss the upcoming proposed rule on Part D Recovery Audit Contractor's (RACs). We urged CMS to take the following suggestions under consideration in developing Part D RACs:

- Appropriately constrain and place limits on the Part C and D RAC contingency fee arrangements;
- Prohibit Part C and D RACs from using statistical extrapolation for determining recoupment amounts;
- Equally incentivize Part C and D RACs to pursue underpayments, as well as overpayments;
- Require Part C and D RACs to coordinate their auditing efforts with other auditors and for CMS to monitor and provide oversight over such coordination efforts;
- Adopt a series of audit best practices provisions designed to prohibit audit abuses and ensure a fair audit process for community pharmacies;
- Create an oversight board to approve or disapprove of Part C and D RAC proposals to pursue certain complex or borderline auditing cases; and
- Prohibit Part C and D plans from creating in-house RACs.

CMS advised us that the Part D RACs are going to be solely focused on plan sponsors and not pharmacies. They are also focused solely on overpayment and not fraud. Nonetheless, we remain concerned that auditing practices enforced upon the plan sponsors will trickle down to and impact pharmacies. However, CMS maintains that they cannot interfere with the auditing practices of the plan sponsors because of the Medicare Part D non-interference statutory

provision. On the positive side, CMS notified us that any implemented in-house RACs would only be used in Part C and not Part D.

NCPA Attends White House Meeting on Drug Abuse: NCPA President Bob Greenwood represented NCPA in an ONDCP meeting to discuss the pharmacist's role in preventing prescription drug abuse. The stakeholder meeting was convened in response to action items laid out in the Administration's Prescription Drug Abuse Prevention Plan. In the association's comments, NCPA stated that as one of the most accessible and trusted health care providers, community pharmacists recognize the importance of addressing the serious problem of prescription drug diversion and abuse, and believes that community pharmacists are well-positioned to respond to the action items laid out in the prevention plan, particularly in the areas of education, tracking and monitoring, and proper disposal. To that end, NCPA launched a webpage this week dedicated to the prevention of prescription abuse, www.ncpanet.org/preventrxabuse. The homepage provides resources, tools, and educational materials for pharmacists and patients related to the topic of medication abuse and misuse.

Political Activities: NCPA staff attended political and fundraising events this week for: Sen. Jerry Moran (R-KS): Co-Chair of Senate Community Pharmacy Caucus; Rep. Pete Sessions (R-TX), who Serves on House Rules Committee and is Chairman of the National Republican Congressional Committee; and, Rep. Tom Marino (R-PA): Lead sponsor of H.R. 1946, The Preserving Our Hometown Independent Pharmacies Act

John M. Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs
Director, Advocacy Center
National Community Pharmacists Association (NCPA)
100 Daingerfield Road
Alexandria, VA 22314
703-683-8200 X1184 - office
571-214-3936 - cell
john.coster@ncpanet.org