

National Community Pharmacists Association (NCPA)

Government Affairs Update - Week Ending September 18th, 2010

Small Business Credit Expansion Bill: This week the Senate passed the Small Business Jobs and Credit Act of 2010 on a mostly partisan vote which included two retiring Senate Republicans voting in favor. The House passed a similar measure earlier this summer and will need to act to make these provisions law.

The bill includes a \$30 billion lending fund which has the potential to help credit-worthy small businesses that have had difficulties obtaining credit. This legislation establishes a \$30 billion fund to spur community bank lending to small businesses. The bill also authorizes \$12 billion of this allocation in small-business tax breaks. In addition, the bill allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax. In addition, here are some other relevant provisions:

- increase the SBA's 7(a) program's loan limit from \$2 million to \$5 million
- increase the SBA's 504 program's loan limits from \$2 million to \$5 million for standard borrowers, and from \$4 million to \$5.5 million for manufacturers
- increase the SBA's Microloan program's loan limit for borrowers from \$35,000 to \$50,000, and for Microloan intermediaries from \$3.5 million to \$5 million
- temporarily increase the SBA's 7(a) loan guaranty from 85% on loans up to \$150,000 and 75% on loans over \$150,000 to 90% for all 7(a) loans and provide for the elimination of selected fees on the SBA's 7(a) and 504 loans through December 31, 2010
- temporarily increase for one year the SBA's 7(a) Express Loan limit from \$350,000 to \$1 million

Senate Action on Elimination of 1099 Tax Requirements: Amendments to the Senate Small Business Credit Expansion Bill (referenced above) which would have repealed the new IRS 1099 tax form reporting requirements were defeated in the Senate this week. We would like to thank all our members who participated in the grassroots outreach in support of the repeal. NCPA will continue to urge both the House and Senate to eliminate these new burdensome requirements. We are cautiously optimistic that there will be some type of repeal before the end of the year.

NCPA worked closely with NFIB and its coalition stakeholders to repeal or narrow the expanded 1099 reporting requirements for small business under the new health care reform legislation. As a reminder, the new requirements would require businesses to provide a 1099 form to any entity from which they purchase more than \$600 in goods and services, starting in 2012. Right now, 1099 forms are only required for services over \$600.

DME Competitive Bidding Hearing: The House Energy and Commerce Subcommittee on Health held a hearing this week entitled "Medicare's Competitive Bidding Program for Durable Medical Equipment: Implications for Quality, Cost and Access". The hearing examined the conception and implementation of the competitive bidding program, the implementation of the Round 1 re-bid (which starts in 9 MSAs in 2011, including mail order diabetes testing supplies only), and its potential effects on patients, providers, and suppliers. Witnesses included representatives from CMS, GAO, and other industry stakeholders. In its statement for the record, NCPA addressed

several areas of concern with the overall program and its potential impact to retail pharmacy through questions submitted for the record.

While many Members of the Committee voiced their concerns to CMS regarding the negative impact the competitive bidding program may have on small providers and patient access, Chairman Waxman and Congressman Pallone stated that they think the competitive bidding program should continue but be monitored very closely. There may be a Ways and Means hearing on the same subject matter in the next few weeks. NCPA will continue to push for legislation (H.R. 5235) which codifies CMS' current rule that exempts small community pharmacies from bidding on diabetic test supplies.

Flexible Spending Accounts: On September 3, 2010, the Internal Revenue Service (IRS) issued guidance reflecting statutory changes regarding the use of certain tax-favored arrangements, such as flexible spending arrangements (FSAs), to pay for over-the-counter medicines and drugs. The new healthcare reform legislation established a new uniform standard that, effective January 1, 2011, applies to FSA's. Under the new standard, the cost of an over-the-counter medicine or drug 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 has addressed several operational and implementation concerns with the new FSA rules. We hope to send a formal communication to the Department of Treasury highlighting a series of questions and concerns and will push for a brief delay to give retail pharmacies and customers adequate time to make it through the transition over January 1, 2011 as easily as possible.

Meeting with White House Office of Health Reform: NCPA senior staff met with staff of the White House Office of Health Reform to discuss a number of health care reform law implementation issues. These included CMS implementation of the new AMP-based Medicaid Federal Upper Limits (FULs) for generics; continuing concerns with implementation of the 340B drug discount program and its impact on community pharmacy; and Medicare Part D issues, including the new coverage gap discount program. The White House is intimately involved in monitoring the implementation of the new health care reform law.

Meeting with CMS on Medicare Part B Issues: On September 17, NCPA met with the CMS Medicare Part B DME competitive bidding team. NCPA thanked CMS for exempting independent community pharmacies from the next round of competitive bidding for diabetic testing supplies. However, NCPA also raised concerns with CMS that our members will cease to provide diabetic testing supplies unless our members are permanently exempt from competitive bidding. As it stands, by statute, competitive bidding prices must be applied to independent community pharmacies by 2016. NCPA also raised concerns that under the next round of competitive bidding for mail order diabetic testing supplies, CMS's proposed definition of "mail order" will prevent our members from providing diabetic testing supplies to homebound and

“snowbird” Medicare beneficiaries. CMS representatives further clarified and verified that by 2016, either independent community pharmacists must be included in competitive bidding for DME supplies or the prices from competitive bidding must be applied to independent community pharmacists; the discretion lies with CMS on which direction to go.

Alabama Medicaid Pharmacy SPA: CMS informed NCPA this week that the agency has approved the Alabama Medicaid State plan amendment (SPA) which would reimburse pharmacies at invoice-based AAC plus \$10.64 fee. The new reimbursement method goes into effect on September 22, 2010.

Coverage of Preventative Services under Health Care Reform: NCPA submitted comments on Interim Final Rule for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventative Services under the new health care reform law. NCPA comments highlight the role pharmacists can play in providing preventative services such as blood pressure and cholesterol screening, tobacco cessation and obesity-related counseling and intervention as well as routine immunizations. The rule as currently written seems to be tailored toward delivery of such services by physicians in spite of the fact that enacted federal healthcare reform legislation included numerous references to collaborative care models. The rule would only waive cost sharing requirements for those services provided by in-network providers. NCPA comments suggest that in order to truly address the issue of the underutilization of preventative care services, HHS needs to expand access to providers and treatment sites in the community. NCPA also suggests that HHS actively promote a more collaborative approach to health care services by encouraging more health plans to enlist the services of allied health care professionals, such as pharmacists.

Meeting on 340B Drug Discount Program Issues: NCPA met with representatives from the Safety Net Hospitals for Pharmaceutical Access (SNHPA) to discuss the 340B program. SNHPA stated that it desires to work with NCPA and its members to help more members become contract pharmacies. SNHPA also indicated a willingness to look into allegations of abuse of the 340B program. NCPA clearly communicated to SNHPA that we believe that the definition of “patient” within 340B is too broad and allows 340B covered entities to service certain insured, as well as uninsured patients, making huge profits off of the former. In addition, some 340B entities are able to induce insured patients to leave their community pharmacies through co-pay discounts at the 340B pharmacy. SNHPA and NCPA will continue to discuss proposals to alter the “340B patient” definition.

FDA Advisory Committee on Scheduling DXM: NCPA attended an FDA advisory committee meeting on September 14 to discuss dextromethorphan and whether it should be scheduled as a controlled substance. The FDA advisory committee recommended that dextromethorphan should NOT be scheduled. The FDA usually follows the advice of its Advisory Committees. NCPA agrees with this decision and will continue to focus as necessary on efforts to keep abuse levels low.

Comments on HITECH Proposed Privacy Regulations Submitted: NCPA submitted comments on Modifications to HIPAA Privacy, Security and Enforcement under HITECH. NCPA

comments are largely supportive of the efforts to provide further protection to consumers and also highlight a number of situations in which additional clarity is needed. As one example, the proposed rule grants patients additional rights in certain circumstances to ask pharmacies and other covered entities to restrict disclosure of the patient's protected health information to a health plan. In some cases, such action would violate the pharmacy's contract obligations to third-party payers such as pharmacy benefit managers. To clear up this potential conflict, NCPA that guidance be issued to clarify that a patient's request to exercise this right shall supersede any conflicting contractual agreement.

NCPA Political Activities: With less than 50 days left before the 2010 midterm Congressional elections, NCPA continues to attend numerous fundraisers for Members of Congress and other political activities. NCPA staff attended the National Republican Senatorial Committee (NRSC) retreat in Bedford, PA last week, and three meetings with Members of Congress this week as well as those who are seeking Congressional seats, including the Blue Dog Race Update, the Republicans' "Young Guns" meet and greet, and the National Republican Congressional Committee race update.

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