

National Community Pharmacists Association (NCPA)

Advocacy Center Update

Week Ending September 2, 2011

NCPA Congressional Visits Opposing Express Scripts-Medco Acquisition: NCPA's primary focus on Capitol Hill in the past month has been Congressional education regarding the proposed ESI-Medco merger. Currently, 4 Members of Congress have sent letters to the FTC urging them to block the merger, Congressman Don Young (R-AK), Congresswoman Jan Schakowsky (D-IL), Congressman Lloyd Doggett (D-TX) and Congressman Joe Courtney (D-CT). Additionally, Congressman John Conyers (D-MI), the highest ranking Member of the House Judiciary Committee sent to Congressman Lamar Smith, Chairman of the House Judiciary Committee, urging the committee to hold a hearing on the proposed merger. We have held more than 60 meetings so far since the announcement of the merger.

Debt Commission Committee Meeting: This week, Michael Foer of Foer's Pharmacy in the Washington DC region met with the health staff of Representative Chris Van Hollen (D-MD). Congressman Van Hollen is one of the six House members of the Debt Commission or "Super Committee." The Committee is charged with finding \$1.2 trillion in Federal program savings this Fall. The meeting included EPIC Pharmacy President and CEO Angelo Voxakis, and David Sanders of NCPA staff. We covered CVS-Caremark, ESI-Medco, H.R. 1971, and mail order waste. When Congress comes back next week, the work of the Debt Commission will be front and center.

Pharmacy Visits: Senate Finance Committee staff representing Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) met with John Ecklund of Preston's Pharmacy in Arlington, VA. The problems associated with PBM audits and MAC pricing, Part D in particular was discussed. Also this week, Rep. Mike Fitzpatrick (R-PA) and Sen. Rob Portman (R-OH)'s staff attended pharmacy visits. Senator Portman is one of the 6 Senate Members of the Debt Commission Committee or "Super Committee."

NCPA Meets with Medicaid Director Organization: This week NCPA met with the Executive Director and the Director of Federal Policy and Strategy for the National Association of Medicaid Directors (NAMD). NAMD is a fairly new association representing the specific interests of the nations Medicaid Directors. NCPA is hoping to open a regular dialogue with this organization and hopes to work closely with them over the coming months on a number of state related issues.

OMB Extended Review of AMP Regulation Could Further Impact Medicaid Generics: The White House Office of Management and Budget (OMB) has extended its review of the Medicaid AMP regulation, which has been under review under early June. Generally, OMB reviews proposed agency regulations within 90 days and returns them to the originating agency (in this case the Department of Health and Human Services) for modification and

eventual release for comment. It is not clear how long this will delay the AMP regulation. However, NCPA continues to hear numerous complaints from pharmacists regarding state MACs for Medicaid generics that are much lower than their acquisition cost. That is because state MACs are based on the Federal Upper Limits (FULS) for generics – which are set by CMS – but haven't been updated in several years. States may not want to increase their MACs above the outdated FULs because they don't get any Federal matching funds above the FUL amounts. But, CMS is waiting for the new authority in this now delayed new AMP regulation – the final version of which may be many months away – before updating the FULs to reflect current market prices! We are considering out options in this unacceptable catch 22 situation for pharmacists.

CMS Makes Medicare Part D Changes Final: CMS published a final rule regarding ne changes to the Medicare Part D prescription drug program. In terms of prompt pay to pharmacies, the final rule implements regulatory provisions that will make it more difficult for Part D plans to manipulate the prompt pay system to create delays longer than those set forth in MIPPA. That said, CMS leaves it up to pharmacies and the Part D plans to negotiate the time period which pharmacies have to fix deficiencies of which they are promptly notified. Turning to the update of the prescription drug pricing standard, CMS refused to require more frequent updating than every 7 days, to require date of service pricing or to require use of a benchmark provider. This means that there will still be a lag between when prices are changed and reimbursement is updated. Finally, in terms of Part D marketing, CMS is prohibiting PBMs from putting their names on Part D beneficiary id cards.

On another Part D issue, Express Scripts and CVS Caremark are informing pharmacies that they will be subject to retrospective recoupment if they erroneously bill hospice drugs to Medicare Part D. Pharmacists are concerned regarding how they will know definitively whether a patient is a hospice patient. NCPA intends to raise this issue in a meeting with CMS next week.

NCPA Comments on Medicare Part B Program: NCPA submitted comments regarding CMS' proposed rule governing the Part B program for 2012. NCPA is urging CMS to raise the supply and dispensing fees for Part B drugs, which has not risen since 2006. NCPA also asked CMS to look into why reimbursements for some nebulizer/inhalant drugs are changing suddenly, such that pharmacists are being extremely under-reimbursed for those drugs in light of their costs.

NCPA Comments on ESRD Program: NCPA submitted comments regarding CMS' proposed rule governing the ESRD program for 2012. NCPA continues to urge CMS not to transition oral-only ESRD drugs from Part D to the Part B bundle in 2014. NCPA is concerned that this will result in fragmentation of care as patients will be forced to receive one set of drugs from the ESRD clinics, while receiving another set of drugs from their pharmacists. NCPA also complained about pharmacists not being made aware of which drugs are sometimes ESRD drugs, and when those drugs are ESRD-related drugs and when they are not for billing purposes. Pharmacists will face recoupment for any claims erroneously billed to Part D.

Competitive Bidding for DME Update: Now that CMS has announced the new phase of the Medicare Part B competitive bidding program for durable medical equipment, it's important to know how this will affect the independent community pharmacy.

- In July 2013, the program will expand to an additional 91 MSAs, joining the 9 MSAs that are already in the program. If you want to know if your pharmacy will be affected, go to www.dmecompetitivebid.com and enter in the zip code of the location of the pharmacy.
- In these additional 91 MSAs, only winning bidders will be able to supply the items covered. These include: oxygen, enteral nutrients, walkers and related accessories, and wheelchairs among some others. The list of items can also be found on the website above.
- Diabetes testing supplies provided by community pharmacies will not be affected in 2013. Medicare beneficiaries can still come to the pharmacy to pick them up. However, CMS intends to require a national mail order diabetes supplies bidding program in which only mail order suppliers will have to win the bid to be able to supply diabetes testing strips through the mail. However, once the national mail order program starts in July 2013, only these mail order suppliers will be able to home deliver. Under CMS regulations (which NCPA strenuously objects to) retail pharmacies will not be able to provide any type of home delivery of Medicare diabetes testing supplies. The patient (or caregiver) must come to the pharmacy and pick them up.
- Congress may seek to reduce the fee schedule amount for diabetes testing supplies as part of the debt reduction deal that is supposed to be worked out this Fall. NCPA is objecting to this policy because it will negatively impact patients' access to these supplies.
- In 2016, all retail pharmacies will have to either bid or accept a competitively bid price for Medicare diabetes testing supplies in order to provide these diabetes testing supplies. We are trying to repeal both this requirement that independent pharmacies accept the low bid price in 2016, as well as the prohibition on home delivery by retail pharmacies through the introduction of H.R. 1936, the Medicare Access to Diabetes Supplies Act, introduced by Congressmen Schock (R-IL) and Welch (D-VT). Please contact your Members of Congress and ask them to support the bill.

NCPA Participates in Acetaminophen Best Practices Program: NCPA staff participated in a stakeholder meeting convened by APhA on adopting best practices for prescription labeling of acetaminophen-containing medications. The purpose of the meeting was to convene stakeholders to implement NCPDP recommendations for acetaminophen prescription container labeling, including: complete spelling of active ingredients in prescription products containing acetaminophen; standardization of acetaminophen concomitant use and liver warning label; and prioritization of warning label printing so that it is among the top three labels. NCPA will remain engaged in discussions, and coordinate with technology vendors if such changes are implemented in pharmacy systems to educate members.

NCPA Meets with CMMI Staff on MTM: NCPA met with the CMS Innovation Center to provide an introduction on the independent community pharmacy marketplace, provide a landscape of patient care services currently provided, and to explore opportunities for NCPA member to become engaged in demonstrations as a result of the Affordable Care Act. NCPA expressed its commitment to Partnership for Patients, and mutual goals such as improving medication use, reducing hospital re-admissions, and making adherence a priority were shared. A potential area of interest would be from section 3026, the Community Based Care Transitions Program (CCTP), where proper medication reconciliation provided by community pharmacists can improve care while reducing health care costs. NCPA also shared the recent launch of Simplify My Meds which was met with interest and seen as a potential solution to issues related to medication non-adherence.

NCPA Interacts with Mississippi Board on PBM Regulations: NCPA conducted initial outreach with the state Board of Pharmacy, which is now tasked with the licensing of PBMs. NCPA staff met with the Executive Director of the Board, the newly hired PBM Licensing Administrator and two NCPA members who serve on the state board of pharmacy. PBMs were previously under the control of the insurance commission in the state, and the shift in regulatory oversight was seen as being more aligned with the mission and duty of the Board which is to protect and promote the health of Mississippi citizens by regulating and controlling the practice of pharmacy and the distribution of prescription drugs and devices.

The Board was authorized this past Spring to license all PBMs conducting business within the state. The Board is now in the process of developing a license application and identifying PBM's conducting business in MS. NCPA plans to continue dialogue with the Board and independent pharmacy associations, and provide informational assistance where appropriate.

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