

National Community Pharmacists Association (NCPA) Government Affairs Update - Week Ending August 14th, 2010

Community Pharmacy Priority Legislation - HELP US HELP YOU - GENERATE CONGRESSIONAL INTEREST!

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. The 22 current cosponsors of this bill are:

[Rep Barrow, John](#) [GA-12] - 6/28/2010

[Rep Bishop, Timothy H.](#) [NY-1] - 7/30/2010

[Rep Chu, Judy](#) [CA-32] - 7/19/2010

[Rep Frank, Barney](#) [MA-4] - 6/29/2010

[Rep Himes, James A.](#) [CT-4] - 6/24/2010

[Rep Jones, Walter B., Jr.](#) [NC-3] - 6/8/2010

[Rep Lipinski, Daniel](#) [IL-3] - 7/29/2010

[Rep Moran, Jerry](#) [KS-1] - 5/6/2010

[Rep Peterson, Collin C.](#) [MN-7] - 7/14/2010

[Rep Ross, Mike](#) [AR-4] - 5/18/2010

[Rep Walz, Timothy J.](#) [MN-1] - 7/29/2010

[Rep Bishop, Sanford D., Jr.](#) [GA-2] - 6/24/2010

[Rep Boyd, Allen](#) [FL-2] - 6/8/2010

[Rep Courtney, Joe](#) [CT-2] - 6/16/2010

[Rep Gerlach, Jim](#) [PA-6] - 7/20/2010

[Rep Holden, Tim](#) [PA-17] - 5/12/2010

[Rep Kingston, Jack](#) [GA-1] - 6/28/2010

[Rep Loebbeck, David](#) [IA-2] - 7/29/2010

[Rep Owens, William L.](#) [NY-23] - 6/24/2010

[Rep Rogers, Mike D.](#) [AL-3] - 5/13/2010

[Rep Visclosky, Peter J.](#) [IN-1] - 6/21/2010

[Rep Welch, Peter](#) [VT] - 5/20/2010

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. The 20 House members that have sponsored this bill are:

[Rep Bachus, Spencer](#) [AL-6] - 5/28/2010 [Rep Baldwin, Tammy](#) [WI-2] - 7/19/2010
[Rep Bishop, Sanford D., Jr.](#) [GA-2] - 7/15/2010 [Rep Bishop, Timothy H.](#) [NY-1] - 7/30/2010
[Rep Boyd, Allen](#) [FL-2] - 6/22/2010 [Rep Holden, Tim](#) [PA-17] - 6/8/2010
[Rep Jones, Walter B., Jr.](#) [NC-3] - 5/12/2010 [Rep Lee, Christopher J.](#) [NY-26] - 5/18/2010
[Rep Lipinski, Daniel](#) [IL-3] - 7/30/2010 [Rep LoBiondo, Frank A.](#) [NJ-2] - 5/28/2010
[Rep Marshall, Jim](#) [GA-8] - 6/22/2010 [Rep Melancon, Charlie](#) [LA-3] - 7/22/2010
[Rep Owens, William L.](#) [NY-23] - 7/15/2010 [Rep Peterson, Collin C.](#) [MN-7] - 7/15/2010
[Rep Posey, Bill](#) [FL-15] - 5/12/2010 [Rep Rogers, Mike D.](#) [AL-3] - 5/18/2010
[Rep Rogers, Mike J.](#) [MI-8] - 5/6/2010 [Rep Ross, Mike](#) [AR-4] - 5/24/2010
[Rep Watson, Diane E.](#) [CA-33] - 5/11/2010 [Rep Westmoreland, Lynn A.](#) [GA-3] - 6/23/2010

We ask all community pharmacists to THANK their Member of Congress if they have cosponsored either bill, OR contact their Members of Congress and ask them to cosponsor these important bills. We are looking to identify Senate sponsors of this legislation.

Medicaid FMAP Funding and AMP: This week the House of Representatives passed the \$26.1 billion aid package which includes a \$16.1 six month extension of the federally increased Medicaid funding for states, known as FMAP (which the Senate passed last week). The legislation was signed into law by President Obama the same day. This should help states meet their Medicaid financial obligations through June 2011 and avert provider cuts. NCPA supported the FMAP extension.

Also included in the legislation is a new AMP provision which would allow manufacturers to include non-retail pharmacy prices when calculating AMPs for inhalation, infusion, instilled, implanted, or injectable drugs if these drugs are ***not generally dispensed through retail community pharmacies***. This will allow states to collect manufacturer rebates on these drugs, and is estimated to save states \$2 billion over 10 years. NCPA will be monitoring how this might impact pharmacy reimbursement for these drugs.

New 1099 Tax Requirements: NCPA continues to work closely with other small business groups to repeal or narrow the expanded 1099 reporting requirements for small business under the new health care reform legislation. The provision 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. The Senate expects to consider two 1099 amendments when they return from recess the week of September 13th. They expect to vote on an amendment which would completely repeal the new 1099 requirements as well as an amendment that would amend the new 1099 filing

requirements by increasing the payment threshold to \$5,000 (up from \$600) for the year for payments made for property (i.e. goods), and exempting small businesses with 25 or fewer employees from the new filing requirements for property, regardless of the payment amounts. NCPA will be providing more recommendations to our members regarding this issue before Congress returns from its summer recess.

Meeting with White House Office of Health Reform: NCPA met with the White House Office of Health Reform this week to talk about issues of interest to community pharmacy, including the operation of the new health insurance exchanges, PBM transparency in the exchanges' plans, and the requirement that reimbursement incentives be included in these plans to help improve quality of care, including medication use.

NCPA Comments on "Grandfathered Plans" Rule: This week NCPA submitted comments regarding proposed regulations outlining which health plans are eligible for treatment as "grandfathered" health plans and exempt from certain requirements of the new health care reform legislation. NCPA requested that the final regulations: 1) Mandate that grandfather status for health plans cease when health plans make changes to existing plans to mandate or incentivize beneficiaries to use mail order pharmacies; and, 2) Allow health plans to change tier composition in order to promote beneficiary access to generic medications without risking loss of their GHP status, but not create specialty tiers for the sole purpose of shifting patents to their own mail order pharmacies for specialty medications.

NCPA Submits Comments to NAIC on PBM Transparency: NCPA submitted comments to the National Association of Insurance Commissioners (NAIC) workgroup currently formulating draft regulations for the implementation of the state insurance exchanges. NCPA comments request that the workgroup include in any relevant regulatory provisions the requirement that health plans operating in the exchanges include the PBM transparency provisions required under the new health care reform law in any contracts that they may enter into with PBMs.

Senate Letter on MTM Grant Program: Senator Thad Cochran (R-MS), Ranking Member on the Senate Appropriations Committee, submitted a letter to Agency for Health Research and Quality (AHRQ) Director Carolyn Clancy, asking that she implement the new pharmacy medication therapy management grant program as soon as possible. The grant program would fund opportunities for pharmacists to test new and innovative ways to deliver MTM as part of an interdisciplinary health care team. The program as supposed to go into effect in May, but no monies were set aside to fund it. Senator Cochran's letter is very important in making this program a success because of his key position on the Appropriations Committee, which could fund this program.

NCPA Meeting with CMS on Fraud, Waste and Abuse Issues: On August 11, NCPA attended a meeting with representatives from CMS's Center for Program Integrity, including the Deputy Center Director and the Directors of the Medicare Program Integrity group and Medicaid Program Integrity group. NCPA delivered a presentation to the group outlining NCPA members' concerns regarding CMS' fraud, waste and abuse efforts. More specifically, NCPA discussed CMS' FWA training requirements, Part D record keeping requirements, implementation of PBM transparency provisions in Part D, PBM Part D audit abuses, and CMS's plans for using RAC, ZPIC and CERT auditors in Medicare Parts B and D. The CMS

representatives were receptive to our recommendations. For example, CMS intends to release further guidance and clarification on how pharmacists can meet the requirements of Part D FWA training through Part B enrollment and/or accreditation. NCPA will continue to engage the Center for Program Integrity in the future.

Draft DEA LTC “Nurse as Agent” Legislation Released: Senate Aging Committee Chairman Herb Kohl (D-WI) released draft discussion legislation this week to address the DEA “nurse as agent” issue in long term care facilities with respect to the prescribing and dispensing of controlled substances. The legislation would require the DEA to create a new category of registrant called a “controlled substance custodian” for a LTC facility that would allow the facility to obtain and maintain controlled substances. The legislation would also require that a LTC facility and its supplier pharmacy enter into a contractual relationship that identifies the specific positions (not persons) in the facility that are able to transmit a prescriber’s controlled substance prescription to a pharmacy. The medical director and prescribers of the LTC facility would have to enter into an agreement to take responsibility for the actions of their agents. The bill would also require CMS to define an appropriate chart order. Action on this bill is unlikely in this session of Congress, but we appreciate Senator Kohl’s help in trying to address this important patient care situation.

NCPA will also be providing feedback to DEA on its request for information on how to address this nurse as agent issue. We held a call with several dozen NCPA members this week that serve LTC facilities to obtain their input.

CMS Regulations on Short Cycle Dispensing: NCPA was told this week that proposed regulations regarding Medicare Part D short cycle dispensing program in long term care facilities – which goes into effect in 2012 – will be out at the end of August. We will be analyzing the regulations and commenting, and will be looking for NCPA member input on these proposals.

Update on Part B PECOS System: NCPA has learned that the most recent figures available show that the percentage of rejects due to providers submitted on claims not being enrolled in PECOS has decreased from approximately 25% to 19%. CMS is now updating the ordering/referring file twice weekly so the Part B intermediaries have more frequent access to implement edits. We will continue to urge the Agency to delay implementation of Phase II edits of PECOS until at least January 2011.

TRICARE Generic Drug Reimbursement: NCPA continues to ask pharmacies to let us know if they have seen a recent sudden drop in TRICARE generic reimbursement. NCPA was made aware that ESI may have significantly decreased the generic reimbursement for some DOD TRICARE prescriptions. We do not want specific reimbursement rates, just information about whether rates have changed. NCPA has secured a meeting with TRICARE to talk about this issue, but would like to hear more evidence about what might be going on in the field.

Alabama State Plan Amendment: The scheduled implementation date of August 13, 2010 for the new Alabama Medicaid reimbursement modification has been postponed pending CMS final approval. The proposal would pay pharmacies at actual acquisition cost (based on a survey of

pharmacy invoices) plus a \$10.64 dispensing fee. CMS often asks states for more information from states to justify changes in state Medicaid program coverage and reimbursement policies.

Congress at Home: Talk with your Member!: Both the House of Representatives and Senate have adjourned for summer recess. Congress comes back into session in mid September and will be in Washington for about 4 weeks until they adjourn for the midterm elections.

While Members of Congress are back home in their districts, make sure you take time to talk with them about community pharmacy priorities. Make sure they understand the Federal legislation or policies you would like them to support for your patients and your pharmacy business. Invite them in to see your pharmacy. NCPA has prepared the attached “community pharmacy platform” document, which we urge that you use when talking with your Members of Congress as well as your patients.

Political Activities: One of the best ways to help Members of Congress understand the challenges faced by community pharmacies is to invite them to your pharmacy! Currently, there are 13 Congressional pharmacy visits scheduled for the August recess, but we are looking for more willing NCPA members to host a pharmacy visit: Here's who is scheduled so far:

Gene Taylor (MS)
Ike Skelton (MO)
Howard Coble (NC) 2 visits
Dan Boren (OK)
Ted Deutch (FL)
Roy Blunt staff (MO)
John Adler (NJ)
Aaron Schock (IL)
Geoff Davis (KY)
Gus Bilirakis (FL)

Scheduling in progress: (5 visits)

Charles Djou (HI)
Mazie Hirono (HI)
Nick Rahall (WV)
Anthony Weiner (NY)
Rodney Frelinghuysen (NJ)

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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.