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National Community Pharmacists Association (NCPA)
Government Affairs Update - Week Ending January 16th, 2010

Health Care Reform: This week, health care reform negotiations intensified with marathon sessions between Democratic Congressional leaders and the White House. As of latest reports, negotiators are optimistic that they will be able to wrap up negotiations and send a package to the Congressional Budget Office (CBO) for scoring this weekend. However, leaders still expect CBO to take at least a week to score the negotiated bill before it is released.

All eyes are on Tuesday's special election to fill Former Senator Edward Kennedy's (D-MA) seat. Recent polling shows state Senator Scott Brown (R) pulling even or ahead of Massachusetts Attorney General Martha Coakley (D), which could impact Senate Majority Leader Reid's (D-NV) ability to get the 60 votes he needs to pass health care reform. If Coakley loses, Congressional leaders and the Obama Administration will have to determine how they proceed next on health reform, if at all.

Here's where we stand on pharmacy issues relating to the health care reform bill:

Medicaid Pharmacy Reimbursement (AMP Reform): With negotiations to craft a final health care reform bill in its final stages, 52 members of the House of Representatives sent a letter urging Speaker Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), and Energy & Commerce Committee Chair Henry Waxman (D-CA) to adopt the Senate's proposal for restoring some of the cuts to Medicaid generic prescription drug reimbursement for pharmacies. We thank Congressman Bruce Braley (D-IA) for his leadership in getting this bipartisan letter to address this critical access issue.

The Senate bill's AMP definition is more reflective of pharmacy's costs to acquire prescription medications. The Senate's legislation also includes a higher generic drug reimbursement (no less than 175% if the weighted average AMP), a critical provision that provides CMS with necessary flexibility to make adjustments to Medicaid pharmacy reimbursement to ensure pharmacies are sufficiently reimbursed.

PBM Transparency: NCPA continued to call on Congressional Leaders to retain the strong PBM transparency requirements in a final bill. To counter ongoing PBM lobbying, NCPA met with the FTC and members of the House and Senate to limit the effectiveness of their efforts to knock reform out of the bill. We are working with Congressman Weiner (D-NY) and Senator Cantwell (D-WA), sponsors of the PBM transparency language, to assure that they weigh in with FTC on the importance of PBM transparency.

We also met with the staff of Senator McCaskill (D-MO) and Senator Bayh (D-IN) after receiving reports they may be sympathetic to some of the arguments made by PBMs, and we launched a grassroots effort to be sure they were aware of the strong presence of independent pharmacy in their states.

Medicaid Cost of Dispensing Study: Senator Bennet (D-CO) was not able to include his amendment requiring a GAO study regarding the cost of dispensing Medicaid prescription drugs into the final Senate health care reform bill, we are working with him to send a request to GAO for the study independent of health care reform.

Part D LTC Pharmaceutical Waste: NCPA and Gerimed sent a letter to Congressional leaders, raising strong concerns about provisions in the health care reform bill that would require the use of certain dispensing techniques in long term care facilities to prevent waste in pharmaceutical dispensing for Part D patients. Congress and CMS believe that this approach will save billions of dollars in reduced dispensing of pharmaceuticals. We urged that the new technologies be pilot tested first, and also pointed out that the anticipated savings may not be realized because of the more frequent dispensing fees that would have to be paid to pharmacies for more frequent dispensing to LTC facilities. We are also seeking extension of the Medicare prompt pay provisions to long term care pharmacy claims.

Medicare DME Accreditation: We continue to believe that a permanent DME accreditation exemption for pharmacies will be enacted as part of the health care reform bill. What is not clear is whether the exemption will be for pharmacies that only sell certain products, or for pharmacies whose DMEPOS billings are only a small percentage of their sales. Although January 1, 2010 was the accreditation deadline, CMS appears to be continuing to allow pharmacies that are not accredited to bill for DME supplies while the agency waits to see whether a permanent DME exemption will be enacted in the near future.

This past week, Omnisys forwarded NCPA (and other pharmacies that bill through Omnisys) a “waiver of liability” form for unaccredited pharmacies that continue to bill for DME supplies through the company’s billing system. Pharmacies have to sign and return the form to Omnisys. NCPA can provide a copy of the waiver form if needed.

This week, NCPA sent a letter of support to Congressman Kendrick Meeks (D-FL) for his bill that would repeal the DME competitive bidding program in its entirety. NCPA continues to be concerned that CMS is planning to try and move diabetes testing supplies to mail order, which would have a negative impact on Medicare beneficiaries and well as the community pharmacies that supply them.

CMS Part B Billing and Recoupment Issues: NCPA is hearing from its members that they are receiving recoupment letters from Medicare Part B DMEMACs, asking for payment back for diabetes testing supplies claims that were billed to Medicare Part B, but (according to CMS) should have been billed to the patient’s Medicare MA-PD plan. NCPA will be talking to CMS again this week about this issue to see if this is an issue that can be handled plan to plan (that is, Medicare Part D to Medicare Part B), rather than using the pharmacy as an intermediary. A possible long term solution is requiring that the patient’s Medicare Part B record reflect the fact that they also have Medicare MA-PD coverage, who would be the primary payer for these types of products. This would help the pharmacist know that the billings should be sent to the MA-PD plan.

CMS also hosted a conference call on error rates in provider billings for Medicare DME claims. Based on information presented on the call, CMS stated that the main reasons for billing errors for pharmacies (diabetes supplies are 2nd on the list of most frequent errors, second to oxygen) are: 1) Physician order is incomplete or missing; 2) No beneficiary test log or other justification for test frequency; 3) No medical documentation to support reason the patient is testing above

policy limits; 4) No physician medical records to support the diagnosis; 5) No documentation to show testing is as prescribed or beneficiary is not testing as prescribed (i.e. conflicting documentation); and, 6) No legible physician identifier.

Small Business/Jobs: If Congress is successful at wrapping up health care reform soon, there is discussion that the Senate could consider a bill that would try and increase jobs, targeted at small business owners. Under consideration is an extension of bonus depreciation -- enabling firms to write off half the cost of capital investments in the first year – as well as increasing expensing limits of up to \$250,000 as long as total purchases do not exceed \$800,000. More details are expected when the Senate returns next week.

New Pharmacy Requirements for CPSC-Regulated Products: Community pharmacies will have to comply with new Consumer Product Safety Commission requirements for manufacturers, distributors, and retailers to test and certify certain consumer goods, including some drug packaging affected by the Poison Prevention Packaging Act. The new law goes into effect in February, and will require pharmacies to be able to access manufacturer and distributor “certificates of compliance” for products that are sold in that pharmacy that are regulated by CPSC. Products include some prescription items, most OTC items, and other products such as childrens’ toys. Pharmacies can comply with the new law if they can access the manufacturers’ compliance certificates electronically. NCPA is in the process of developing member education for complying with these regulations.

TRICARE OTC Demonstration: The TRICARE Over-the-Counter Drug Demonstration Project has been extended until November 4, 2012. The program was developed to examine cost versus benefit and beneficiary satisfaction of select OTC drug coverage within the pharmacy benefit when deemed therapeutically equivalent to prescription alternatives. Originally implemented May 17, 2007, it was available only through a limited number of military treatment facilities and TRICARE mail order pharmacies, but was then opened to TRICARE network retail pharmacies. The program only includes five OTC medications and participating patients must present a prescription for these drugs. There is no cost share for patients.

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