

National Community Pharmacists Association (NCPA) Government Affairs Update - Week Ending December 19, 2009

Health Care Reform: As of Saturday night, it looked like the Senate was on track to pass its version of a health care reform bill right before Christmas. This morning, Senate Majority Leader Reid (D-NV) released the “manager’s amendment”, which made all the changes to the original combined Senate health care bill that he needed to make to be sure he had 60 Democratic votes to stop debate on the bill and move to final passage. Passage of the Senate bill will set up a conference with the House to reconcile the two bills. The stated goal is to have the final bill to the President by the State of the Union address, which is in later January.

The new Senate bill would eliminate the so-called public health insurance option, and would replace it with nationwide health insurance plans that would be overseen by the Federal Office of Personnel Management (OPM). The manager’s amendment did not make any additional substantial changes to the bill relating to community pharmacy. The only changes made include a provision (supported by Senator Hagan from North Carolina) that would put in law some of the changes made by CMS for 2010 in the Medicare Part D MTM program.

Senator Brown’s surety bond amendment did not make it into the manager’s amendment; neither did Senator Akaka’s amendment that would promote mail order in Medicare Part D. Senator Bennet’s amendment to include a Medicaid pharmacy cost of dispensing study was not included; neither was Senator Menendez amendment to create a performance based pharmacy reimbursement program under Medicare Part D. The Senate bill does include a grant program for states to provide additional reimbursement for Medicaid providers with a high volume of Medicaid patients or those in medically-underserved areas.

With respect to the Medicaid pharmacy reimbursement issues, this past week 9 Senators sent a letter to Senator Reid at the request of NCPA in support of the Senate Medicaid pharmacy reimbursement language that specifies that the FULs for generics be set at “not less than 175% of average weighted AMP”, as well as requests that additional resources be made available for small and independent pharmacies who do they highest percentage of Medicaid business. The goal of the letter is to prevent any downward movement of the AMP fix when a conference begins with the House. Senators signing on: Johnson (D-SD), Bennet (D-CO), Brown (D-OH), Burriss (D-IL), Dodd (D-CT), Dorgan (D-ND), Casey (D-PA), Stabenow (D-MI), Udall (D-NM).

On the House side, a letter was sent to Speaker Pelosi from 16 members of the House of Representatives urging House leadership to-at the very least-accept the Senate AMP fix provision which includes a 175% multiplier rather than the House provision which is set at 130%. Reps. signing on: Moran (R-KS), Berry (D-AR), Barton (R-TX), Jones (R-NC), Arcuri (D-NY), Carney (D-PA), Courtney (D-CT), Boucher (D-VA), Weiner (D-NY), McMorris

Rodgers (R-WA), Doggett (D-TX), Bishop (D-GA), Walz (D-MN), Boswell (D-IA), Welch (D-VT), Herseth Sandlin (D-SD).

If the Senate passes its bill, NCPA will be focusing on assuring that the final health care reform bill protects the interests of community pharmacies so we can better serve our patients.

Meetings with Key Legislators: This week, NCPA senior management continued its meetings with Congressional leadership, including Senate Finance Committee Ranking Member Chuck Grassley (R-IA), House Majority Whip Jim Clyburn (D-SC), and House Ways and Means Committee Ranking Member Dave Camp (R-MI). We thanked them for their help in this first session of the 111th Congress, and discussed our priorities for the next Congress.

DME Pharmacy Accreditation Extension and Exemption: The current pharmacy DME accreditation deadline is set to expire on January 1, 2010. Unfortunately we were unable to secure an additional legislative deadline extension. NCPA held a call this week with CMS to make the case that the agency should not take action against any pharmacy that is not accredited by January 1st because it is clearly Congress' intent to exempt pharmacies from these requirements.

While the health care reform bills will not be signed into law by January 1st, it would make little sense for CMS to require pharmacies to leave the program, especially since an exemption of some type may be just around the corner. CMS understands that it would be a problem for patients and pharmacies and an administrative nightmare for the agency. We believe that CMS will grant some form of temporary extension until Congress acts. NCPA will have more information on this topic next week, so be sure to check for more information from us.

Currently, letters are being drafted by House members to send to CMS, urging them to refrain from taking any action until a health care bill is complete. Reps. Space, Berry, Moran and Terry have all signed onto a letter to CMS. We are working with other House and Senate offices to get similar letters.

CAT Employee PDP: Rep. Aaron Schock (R-IL) has agreed to participate in a meeting between Caterpillar, NCPA and IL independent pharmacies to address Caterpillar's employee incentive-based "prescription drug plan with Walgreens and Wal-Mart. We expect this meeting to take place in Rep. Schock's district in Peoria, IL the first week of January, 2010, where Caterpillar's Headquarters are located. We are also in the process of contacting other surrounding Congressional offices to alert them on this important issue and its impact to independents in Illinois.

FSA Debit Cards: Rep. Sander Levin's (D-MI) office, Senior Member of the Ways & Means Committee, is working with the office of Legislative Affairs at Treasury to round up key contacts for a joint meeting in early January to urge them on a timely resolution on this issue. We will continue to work with the office of Rep. Jose Serrano (D-NY), Chairman of the Subcommittee on Financial Services under Appropriations as well as other Members in the Subcommittee to ask for their assistance in addressing this issue with senior officials at the Department of Treasury. We continue to seek a declaration that the FSA transaction purchases of patients from pharmacies that are certified under the "90% rule" are automatically substantiated and do not require additional paper substantiation

FTC Nominations—This week NCPA supported the nominations of Julie Brill and Edith Ramirez to be FTC commissioners. Brill has experience battling PBMs at the state level and Ramirez has fought for consumers through her work at Legal Services in Los Angeles. We believe they will be useful advocates on the commission. The Senate Commerce Committee held a confirmation hearing on Tuesday.

Long Term Care Issues: NCPA participated on a call of the Quality Care Coalition for Patients in Pain (QCCPP). QCCPP was formed by ASCP to tackle the "nurse as agent" issue. DEA enforcement activities in KS, NM, MI, OH, WI and VA were discussed. All enforcement actions so far have been related to schedule III-V medications and recordkeeping requirements, not diversion or missing drugs. Members of the coalition have been asked to broadly disseminate an incident reporting form to gather a rich database of reports of patient care being hindered. As a reaction to recent DEA activity, LTC pharmacies are exceedingly worried about a higher probability for diversion related to an increase in prescription pads floating around facilities and in the mail for controlled substances. QCCPP is urging members to write their MOC urging changes to the CSA.

CMS Open Door Forum: NCPA participated in the CMS Open Door Pharmacy Forum where pertinent changes to the Part D program for 2010 were discussed. Related to the NDC non-matched list, CMS agreed that it is possible based on POS edits that one plan will pay for the non-matched drug, while another will not due to the fact that plans may employ different update processes. CMS also agreed that it was possible for retroactive reversals to occur and that pharmacy should deal with this issue in their contracts with sponsors. NCPA requested a model letter to provide to beneficiaries and CMS said they would discuss. CMS will release soon the final notice that plans must provide beneficiaries to get their consent before trying to encourage them to use mail order. NCPA provided comments on this letter to CMS.

THIS IS OUR LAST UPDATE FOR 2009! HAPPY HOLIDAYS AND WE LOOK FORWARD TO A PRODUCTIVE 2010!

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