

NCPA Advocacy Center Weekly Update

Week Ending January 28, 2012

CMS Publishes Proposed AMP-FUL Regulation: On Friday, CMS published the long-awaited proposed regulation that would implement the AMP-based reimbursement system for Medicaid Federal upper limits (FULs) for generics. Comments on the proposed regulation are due April 2nd and CMS indicates that the agency will publish a final regulation in 2013 (not clear why CMS will take that long to publish a final regulation.) The regulation estimates that implementation of the AMP-based FULs will save \$4.1 billion over 10 years, \$2.5 billion for the Federal government and \$1.6 billion for the states. NCPA will be analyzing the regulation and submitting comments; however, an initial analysis of the regulation is included below.

NCPA Warns CMS on Medicaid Dispensing Fee Increases: NCPA along with the National Association of Chain Drug Stores (NACDS) sent a strong letter to CMS this week, asking that the agency direct states to increase dispensing fees before AMP-based FULs become final. CMS has said that states must increase fees if they use an acquisition-cost based product reimbursement, but not for the AMP-based FULs which may be as low as AACs if not lower. Both organizations argue that patients' access to pharmacies could be significantly compromised, and generic drug dispensing could be reduced, if Medicaid pharmacy dispensing fees are not increased to account for lower product reimbursement. The letter can be found on the NCPA Advocacy Center Website

NCPA Opposes CVS Push for More Mail Order, Restrictive Networks in Medicare Part D: Congressional staff informed NCPA this week that CVS Caremark is pushing mandatory mail order and more restrictive pharmacy networks as a way to save money in Medicare Part D. CVS is advocating that these policies be considered to "pay for", in part, the year-long extension of the payroll tax cut. NCPA is meeting with all the Members of the Congressional Conference Committee that is charged with developing the extension package to push against these ill-conceived policies and talk about other ways to save money in Federal prescription drug programs, such as increased use of generics and full pass through to the Federal government of manufacturer rebates paid to PBMs.

NCPA Applauds 25 GOP Lawmakers for CMS Letter Regarding FUL Issues: On Friday, 25 Republican members of the Senate Finance and House Energy and Commerce Committees sent a letter to federal officials at CMS that highlighted many of the concerns NCPA has expressed regarding insufficient, proposed federal upper limits (FULs) for Medicaid generic drug reimbursement. Among those leading the letter were Senator Orrin Hatch (R-UT), the Ranking Republican on the Senate Finance Committee, and Rep. Fred Upton (R-MI), Chairman of the House Energy & Commerce Committee. NCPA greatly appreciates the support of the following Senators and Representatives who demonstrated their support for community pharmacy by signing the letter: *Hatch* (UT), *Upton* (MI), *Coburn* (OK), *Cornyn* (TX), *Crapo* (ID), *Kyl* (AZ), *Moran* (KS), *Roberts* (KS), *Pitts* (PA), *Barton* (TX), *Billbray* (IA), *Blackburn* (TN), *Bono Mack* (CA), *Burgess* (TX), *Cassidy* (LA), *Griffith* (VA), *Guthrie* (KY), *Lance* (NJ), *Latta* (OH), *McMorris Rodgers* (WA), *Murphy* (PA), *Pompeo* (KS), *Stearns* (FL), *Terry* (NE), *Whitfield* (KY). (*Senators are in italics.*) A copy of the letter is on the NCPA Advocacy Center Website.

NCPA Warns Policymakers on Economic Impact to Pharmacies of ESI Medco: NCPA has conducted an economic impact analysis of the proposed merger between Medco and ESI for 17 states. NCPA estimated annual revenue and jobs lost at both the pharmacy and state level if the merger is allowed to proceed, based on the assumption that the merged firm will move patients to mandatory mail order. NCPA estimates that forced mail order will result in the average community pharmacy losing 30% of their prescription drug business to mail order. We are sharing these with policymakers to ask their support to oppose the merger.

House Armed Services Committee Members Concerned about ESI Merger on TRICARE: Seven members of the House Armed Services Committee joined together to send a bipartisan letter to the Department of Defense (DoD) expressing concerns about the merger of pharmacy benefit managers (PBMs) Express Scripts and Medco Health Solutions and the impact the merger could have on TRICARE's ability to provide a quality prescription drug benefit for our nation's military families. The joint letter was led by Reps. Walter Jones (R-NC) and Joe Courtney (D-CT), and the following five members joined in offering their support by signing the letter: Reps. Mo Brooks (R-AL), Bill Owens (D-NY), Martha Roby (R-AL), Mike Rogers (R-AL) and Austin Scott (R-GA). The lawmakers noted that the merger would greatly limit DoD's ability to negotiate a good deal for TRICARE as the merger would result in only two viable PBM options—a merged Express Scripts-Medco and CVS Caremark—that have the capacity to administer benefits for the 9 million Americans who depend on TRICARE. A copy of the letter is found on the NCPA Advocacy Center Website.

Energy and Commerce Committee PDUFA Hearings: On February 1, 2012, the Health Subcommittee will hold a hearing on the reauthorization of the Prescription Drug User Fee Act (PDUFA), which is set to expire on September 30, 2012. NCPA plans to submit a statement for record to draw attention to issues of concern to community pharmacy, including efforts to promote the security of the drug supply chain and to address national drug shortages. The Health Subcommittee has also announced plans to hold a February 7 hearing on the new proposals to create a Generic Drug User Fee and a Biosimilar User Fee. Margaret A. Hamburg, M.D., the Commissioner of the Food and Drug Administration is among those scheduled to testify at the hearing next week.

NCPA Delivers Pharmacists' Petitions to Congress Requesting Part D Hearing: NCPA delivered 180 petitions to Members of the House Energy and Commerce Committee, asking that a hearing be held on issues and concerns with the Medicare Part D program. Petitions were delivered to the offices of Reps. Guthrie (R-KY), Gingrey (R-GA), Whitfield (R-KY), Shimkus (R-IL), Rogers (R-MI), Burgess (R-TX) from pharmacists in his district. NCPA believes that the Subcommittee should hold a Part D hearing to investigate PBM abuses, including their retention of rebates that rightfully belong to the program, lack of transparency in reimbursement, abusive auditing practices, and the impact of restrictive networks on beneficiaries. We thank all our NCPA members for helping us generate these petitions.

FTC Sues to Block Omnicare/Pharmerica Acquisition: On Friday, the Federal Trade Commission filed a lawsuit to block Omnicare's hostile takeover of rival institutional pharmacy provider PharMerica. The complaint alleges that the combined long-term-care pharmacies would

harm competition and could allow Omnicare to raise the drug prices for the 1.6 million beneficiaries who reside in skilled-nursing facilities and are covered by Medicare Part D plans. The FTC claims that the merger would create a combined company that would serve 57% of the skilled nursing beds in the US, with the next closest competitor only serving 2%. ÷A firm that combines the largest and second-largest long-term care pharmacies in the country would have the unique ability to exert even greater bargaining power to raise the price of drugs to Part D health plans, the FTC said.

CMS releases standardized Part D MTM forms: CMS has released the finalized standardized format for the medication action plan and MTM summary that must be given to Part D beneficiaries for MTM. Plan sponsors must begin using this standard form starting January 1, 2013. The standard form includes a cover letter, medication action plan and personal medication list and can be downloaded at http://www.cms.gov/PrescriptionDrugCovContra/Downloads/CMS_10396_MTMP_Standardized_Format.pdf. NCPA members should be prepared to use these standard forms for their MTM Part D patients starting in 2013.

NCPA Attends Care Innovations Summit: This summit provided a forum for healthcare industry and government leaders to discuss the activities and opportunities spurred by the CMS Innovation Center (CMMI). CMMI was created through the Affordable Care Act, and is charged with testing innovative, scalable payment and service delivery models to reduce program expenditures. The major themes that resonated from the conference were the need for: better care coordination, payment reform (moving away from fee-for-service), patient and provider engagement and alignment of incentives. NCPA was pleased with the comments made from physicians and other providers about the critical component of appropriate medication use and adherence to the success of any care coordination model. It was pointed out that pharmacists are poised to have an important influence in improving adherence. Other providers stressed the importance of having a pharmacist engaged in the discharge and hospital transition process for medication reconciliation and proper patient counseling. NCPA is engaged in several initiatives from CMMI and other federal agencies include ACOs, medical homes, improvement of care transitions through Partnership for Patients, and enhancement of HIT.

GAO Report on Prescription Pain Reliever Abuse: Agencies Have Begun Coordinating Education Efforts, but Need to Assess Effectiveness: The report evaluates the education programs and strategies of federal agencies (DEA, FDA, NIH, SAMHSA, and ONDCP) that were developed to educate prescribers and the public about prescription pain relievers and its misuse and abuse. The GAO reports that though the focus of each program varies enough to cover a broad range of education and the overlapping efforts can help reinforce messages, the multiple agencies may benefit from coordination of efforts and establishing metrics to measure impact and effectiveness of the program. Currently, legislation has been introduced that will require this education for all prescribers registering with the DEA to prescribe controlled substances. The American Medical Association opposes this mandate, instead favoring the use of positive incentives to encourage prescribers to complete the currently voluntary CMEs.

In the States:

NCPA Develops Model MAC/Mail Order Legislation: NCPA has received many requests from state associations and related groups for our model MAC and Mail Order language. Along with the model bills, NCPA has created supporting documents, including one-pagers, NCPA's "Mail Order is not For Everyone" presentation and "Waste not Want not" slides