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NCPA Advocacy Center Update Week Ending November 18th, 2011

Before Congress adjourned for the weeklong Thanksgiving recess, the House considered a Balanced Budget Amendment to the Constitution and the Senate debated the National Defense Authorization Act for Fiscal Year 2012 (S. 1867). Only six days remain until the Nov. 23 deadline for the *Joint Select Committee on Deficit Reduction* (Super Committee) to submit a plan for at least \$1.2 trillion in deficit reduction.

Deficit Reduction Super Committee: As of this writing, it appears that too many differences remain between the Democrats and the Republicans for a deal to come together by Thanksgiving recess, which would mean the Super Committee failed to meet its obligations. Under current law, if the Super Committee does not agree on a package that achieves \$1.2 Trillion in savings, across the board sequestration would be triggered in January 2013. This could be altered, however, if Congress enacts a change in the law between now and then that alters the sequestration process. The sequestration limits the impact on Medicare to a 2% across the board cut and exempts Medicaid from any reductions. Reports were that the Super Committee was considering significant cuts to Medicare and Medicaid, some of which would have impacted community pharmacy.

NCPA Advocates for More Generics; Less Mail Order in TRICARE: This week NCPA met with several Congressional offices, including House Armed Services Committee Chairman Buck McKeon of California, regarding potential changes to the TRICARE pharmacy benefit. NCPA argued against more wasteful mail order, and for a balanced savings approach for beneficiaries which would include higher generic utilization. NCPA joined with NACDS to communicate to the Super Committee that we oppose the Administration's proposal which unfairly incentivizes mail order over community pharmacies and would harm beneficiaries' care. We argued for higher generic utilization which would create \$11 billion in savings over 10 years.

In addition, the Senate began consideration of S. 1867, the Defense Authorization Act of 2012, which would authorize almost \$662 billion for military programs. The bill does not include any additional changes to the TRICARE pharmacy benefit. The Senate is considering a number of amendments, and votes will resume after Thanksgiving. NCPA joined with NACDS in a letter to the Senate Armed Services Committee in recommending that the bill reject the Administration's Mail Order proposal, and to explore generic utilization, Medication Therapy Management, and a stock replacement program to modernize the pharmacy benefit.

NCPA Testifies at NCOIL Against ESI-Medco Merger: NCPA continues to prepare for the December 6th Senate Judiciary Committee Antitrust Subcommittee hearing on the proposed merger. NCPA is optimistic that we will have an independent community pharmacy witness at

the negative impact of current PBM practices on patient care will worsen if the merger is approved. ESI and Medco are telling Congressional offices that the merger will reduce costs, improve patient care, and be beneficial for independent pharmacies, myths that we are actively disputing. In fact, we have collected nearly 200 examples from NCPA members about how ESI and Medco's rhetoric about their "partnership" with community pharmacy doesn't match the real world reality of lowered reimbursement, abusive audits, and attempts to shift patients to mail order.

This week, NCPA also testified at the meeting of the National Conference of Insurance Legislators against the ESI-Medco merger. This group represents state legislators who are active in their states on insurance-related matters. NCPA appeared on the same panel as ESI-Medco, advocating for the merger. We appreciate the opportunity to present our views to this important group of legislators.

NCPA Acts to Block Harmful Medicaid Generic Rates: NCPA is working with Members of Congress on letters to CMS, asking that the agency not implement the current draft Medicaid FUL lists for generics until at least a final regulation is published. The two draft lists released to date show that the draft FULs would significantly underpay community pharmacies for Medicaid generic drugs. CMS released its third draft list on Friday November 18th. NCPA will analyze this list and respond just as it has done with the other two lists. We are also working on securing a meeting with the Federal Medicaid director to explain first hand the devastating impact the draft FULs would have on pharmacies and patient access to care.

Senators Support Community Pharmacy At FTC Nominations Hearing: NCPA educated members of the Senate Commerce, Transportation and Science Committee ahead of this week's hearing to consider the reappointment of Jon Leibowitz as Chair of the Federal Trade Commission and the nomination of Maureen Ohlhausen as Commissioner. At the hearing, Committee Senators Pryor (D-AR) and Boozman (R-AR) raised the ESI-Medco merger and expressed concerns regarding the consolidation in the PBM marketplace. Leibowitz said the FTC is reviewing the merger and will fight the merger if they believe that it substantially undermines competition. He said it is presently being studied by the FTC's Bureau of Competition and Bureau of Economics. Further, Leibowitz said he has met with community pharmacists and he said that in addition to considering price effects they also consider the non-price effects on access and on the possibility of stores closing. NCPA is working with Members of the Committee on follow up questions which take into account the enormous burden this merger would have on community pharmacy, consumers and public health programs.

Fighting Fraud and Abuse, FAST Act—Latest Developments: Last week, Rep. Peter Roskam (R-IL), a Member of the Ways and Means Committee, introduced HR. 3399, the Medicare and Medicaid Fighting Fraud and Abuse to Save Taxpayer Dollars Act, also known as the FAST Act, in the House. Sens. Tom Coburn (R-OK) and Tom Carper (D-DE) introduced the FAST Act (S. 1251) in the Senate in September. NCPA met with Rep. Roskam's staff and offered recommendations to address concerns with the House bill, specifically as it relates to assigning specific NPI numbers for Part D prescriptions to all eligible professionals, such as medical residents and interns. Rep. Roskam's staff indicated they would consider amending the bill to incorporate our suggested changes. Rep. Cliff Stearns (R-FL) has also announced plans to

the fraud, which will include portions of the FAST Act, in

Pharmacy Groups Complain to CMS Regarding Dual Revalidation Fees: NCPA, NACDS, APhA and FMI jointly sent a letter to CMS asking them to repeal a dual Medicare enrollment/revalidation fee for pharmacists at a single location that enroll as both mass immunizers and as DME suppliers. The combined fees for 2012 will be \$1,046. The joint letter argues that the dual fees are unduly burdensome on pharmacy and inconsistent with CMS charging the fee only once (\$523) to dual Medicare/Medicaid providers who enroll or revalidate. NCPA is seeking a meeting with CMS to further press the case about the unfairness of the dual fees charged pharmacies providing these services at a single site location.

CMS Announces ACO application timeline: NCPA participated in a phone conference with CMS regarding the application process for becoming an ACO. CMS has announced that ACOs will begin to operate on two staggered start dates, March 23 and June 15, 2012. The Notice of Intent to Apply to become an ACO will be accepted by CMS between November 1, 2011 and February 17, 2012. CMS emphasized that ancillary suppliers and providers, such as pharmacies, must work hard to market themselves and their value to ACOs, so that ACOs will contract with them.

CMS Updates Flu Vaccine Payments: CMS is updating the flu vaccine payment allowances for the 2011-2012 season (available at: <http://www.cms.gov/MLN MattersArticles/Downloads/MM7575.pdf>.) Effective May 9, 2011, claims with influenza virus vaccine code 90654 will be payable by Medicare for claims with dates of service on or after May 9, 2011, if submitted on or after April 2, 2012. Pharmacies should make sure their billing staff is aware of these changes. Medicare contractors will not adjust claims submitted prior to May 9, unless pharmacies bring such claims to their attention.

CMS Announces Fraud, Waste and Abuse Demo Projects: In 2012, CMS will be conducting two demonstration projects in the field of fraud, waste and abuse, which may ultimately impact pharmacy. In the first demo project, CMS will conduct a 3 year project of prepayment review and prior authorization for all power mobility device claims in 7 states. This demo project is limited to power mobility devices, but could pave the way for future expansion into other product areas, such as diabetes supplies. The second demo project will focus on 11 states and will allow Medicare RACs to engage in prepayment review for Part A and Part B claims. The demo project will initially focus on inpatient hospital claims, but it is possible that CMS might expand the scope of the project in the future.

OIG: Part D Claims Lacking Medically Accepted Indications: The OIG found that PDPs lacked access to diagnosis information necessary to ensure that payments for Part D drugs are limited to drugs provided for medically accepted indications. CMS responded that it does not have statutory authority to require physicians to include diagnosis information on prescriptions. CMS stated that the current approach, which permits PDP sponsors to use prior authorization to target drugs that are at high risk for being prescribed without a medically accepted indication, is the appropriate balance to control PDP sponsors' costs and additional burdens that excessive use of prior authorization would place on pharmacies, prescribers, and beneficiaries of Part D drugs.

Street Business Coalition: This week NCPA joined the National Main Street Business Coalition. This small business coalition has two goals: 1) Reforming and simplifying the current tax code to allow microbusinesses to more appropriately invest capital into their operations and local communities, and 2) To empower the Small Business Administration to enhance access to capital for microbusinesses.


CMS: NCPDP D.0 Enforcement Begins in March, 2012: The CMS Office of E-Health Standards and Services (OESS) stated it would not initiate enforcement action until March 31, 2012, with respect to any HIPAA covered entity not in compliance with the X12 Version 5010 and NCPDP D.0. Nonetheless, the compliance date for use of these new standards remains January 1, 2012. NCPA continues to educate its members about the changes to HIPAA and encourages pharmacists to continue working with their trading partners to contact their system vendor to ensure readiness to accept the new standards by January 1, 2012.

NCPA Collects Data Regarding CMS Proposal on LTC Consultant Pharmacists: NCPA closed the members' survey: [Medicare Parts C & D Proposed Rule for 2013 - LTC Consultant Pharmacist Separation Rule Survey](#). CMS is considering requiring LTC consultant pharmacists to be independent of any affiliations with LTC pharmacies, pharmaceutical manufacturers and distributors, or any affiliates of these entities. Out of 300 Long Term Care pharmacies surveyed, 69% of respondents oppose the rule change, with 66% believing that the rule change would be detrimental to the communication between health care providers. Furthermore, 57% of respondents believe that there is currently a shortage of independent consultant pharmacists in the area that their pharmacy resides and 53% of respondents believe that there is currently a shortage of independent consultant pharmacists in the area that their facilities reside.

GAO Study Says Retail Pharmacies Could Provide Postal Services: GAO released a study this week on efforts by the Postal Service to expand retail alternatives to the Post Office in an effort to cut costs and improve financial performance. Two ideas involve expanding contracts with retailers to provide Post Office type services within their stores and expanding the use of retailers as stamp retailers, which involves retailers selling stamps on behalf of the Post Office.

Tool Developed for Small Businesses to Find and Compare Health Insurance Plans: A website to give small business owners a detailed review of their health insurance plan choices was announced on Friday, November 18 by the U.S. Department of Health and Human Services. The tool allows small business owners to compare the benefits and costs of health plans and choose those that are best for their employees. The tool is located on www.HealthCare.gov, which was created under requirements contained in the Affordable Care Act, the new health care law of 2010. The new information added gives small business owners access to the following:

- Insurance product choices for a given ZIP code, sorted by out-of-pocket limits, average cost per enrollee, or other factors.
- A summary of cost and coverage for small group products that shows the available deductibles, range of co-pay options, included and excluded benefits, and benefits available for purchase at additional cost.



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on based on whether the plans are Health Savings Account
ental health, or maternity coverage, or allow for domestic
partner or same sex coverage.

More than 530 insurers have provided information for more than 2,700 coverage plans across all
states and the District of Columbia.