

## Advocacy Center Update Week Ending November 5<sup>th</sup>, 2011

### **Lawmakers, Pharmacists Rally Against Express Scripts-Medco Merger Proposal at U.S.**

**Capitol:** NCPA CEO, B. Douglas Hoey, RPh, MBA, participated in a Thursday morning press conference at the U.S. Capitol organized by the Preserve Community Pharmacy Access NOW! (PCPAN) coalition. The press conference included U.S. Representatives Thomas Marino (R-PA) and Joe Courtney (D-CT) and culminated with an advocacy push that brought community pharmacists from around the nation to Washington, D.C. to urge lawmakers and the Federal Trade Commission (FTC) to reject the proposed mega-merger of pharmacy benefit managers (PBMs) Express Scripts and Medco Health Solutions. PCPAN is a broad coalition of consumers, business and pharmacists chaired by former U.S. Representative Eva M. Clayton (D-NC) in opposition to the merger. This week, the Senate Judiciary Committee Antitrust Subcommittee, Chaired by Senator Herb Kohl (D-WI), announced that a hearing would be held in the Subcommittee on December 6<sup>th</sup>. The hearing is aptly entitled: "The ESI-Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen."

**NCPA Chairman Mark Riley Hold PBM Briefing for Congressional Staff:** This week, NCPA held a successful briefing for Congressional staff to raise awareness of the inner workings of the PBM industry and the negative impact that PBM business practices can have on patients and small community pharmacies. Mark Riley, NCPA's Chairman of the Board and Executive Vice President of the Arkansas Pharmacists Association, was introduced by Rep. Cathy McMorris-Rodgers (R-WA) as the guest speaker before a packed room that included over 30 Congressional staff. Mr. Riley covered the proposed merger between Express Scripts and Medco, and H.R. 1971/S. 1058, the Pharmacy Competition and Consumer Choice Act. In addition, he met with the Arkansas delegation in private meetings on these and other important issues impacting community pharmacists. NCPA thanks Reps. McMorris-Rodgers and Mike Ross (D-AR) and for their help in making this briefing a great success.

**TRICARE Copayments Could Change in the Super Committee:** This week NCPA continued to work on potential changes of positive and negative that could impact access to community pharmacies in the TRICARE program. Rumors are swirling that the National Defense Authorization Act could be considered in the Senate next week, and more incentives for mail order could be included. In addition, the Joint Select Committee on Deficit Reduction, or what is commonly referred to as the "Super Committee," could take up a variety of provisions affecting the beneficiaries' copayment structure in TRICARE. NCPA continues to work with the Senate and House Armed Services Committees and the Super Committee on this important issue.

**NCPA Comments on Second CMS Draft FUL List:** NCPA submitted comments to CMS on the second draft FUL list for multiple source drugs, which was released on October 21st. This list is based on August manufacturer AMPs. The second draft list is plagued with many of the same problems as the first list, including hundreds of generics where the FUL is lower than pharmacy acquisition costs. It appears that CMS is intent on publishing a list every month of which is what the law requires of but it is not clear when or if they will require the states to use these FULs for

es that these lists should not be used for reimbursement. CMS should set FULs only when a final regulation on AMP is published, and the rules of the reimbursement system are clear and transparent to all parties. Moreover, we believe that CMS should use its authority to increase FULs for independent pharmacies beyond 175% weighted average AMP, as justified by a recent OIG report that showed that small pharmacy operations buy at a higher price than chains.

**NCPA Summarizes Final ACO Rule:** NCPA has further reviewed CMS's Final Rule implementing Accountable Care Organizations and the implications of the Final Rule and opportunities presented for community pharmacy. A summary of the key ACO Final Rule provisions can be found on the NCPA Advocacy Center website.

**President Issues Executive Order on Drug Shortages:** President Obama signed an executive order directing the FDA and Department of Justice to take steps to help reduce and prevent drug shortages, protect patients, and prevent price gouging. These actions from the White House complement a bipartisan effort underway in Congress that would require prescription drug manufacturers to provide advance notice to FDA about potential drug shortages. The Executive Order addresses three issues: broadened reporting of potential drug shortages, expedited regulatory reviews of drug suppliers and manufacturing sites, and review of certain behaviors by market participants. NCPA will remain active in the drug shortages discussion, especially regarding when reimbursement rates are not adjusted to reflect pricing changes in the market.

**NCPA Meets with Members of the Mississippi Board of Pharmacy to Discuss PBM Regulation:** NCPA met with members of the MS Board of Pharmacy and MIPA to continue discussions regarding licensure of PBMs. Previously, PBMs were under the control of the Insurance Commission in the state, and the shift in regulatory oversight was seen as being more aligned with the mission and duty of the Board. The Board hired a PBM administrator, charged with oversight of the licensure process. As of the end of September, nearly 200 applications have been sent out to PBMs and associated entities (benefits processor, third party administrators, etc.) that the Board has been able to identify, with an extremely low response rate so far. The due date is 12/31/11, for license period to take effect for calendar year 2012. The licensing fee is \$500, with a penalty of \$1000/day that may be imposed upon any PBM that practices or conducts business in the state without a license.

**Medicare Part D Annual Enrollment Update:** The enrollment period this year runs from October 15 through December 7. For the first time this year, the 2012 Medicare & You handbook for beneficiaries includes a description of MTM benefits: "If you're in a Medicare drug plan and you have complex health needs, you may be eligible to participate in a Medication Therapy Management (MTM) program. These programs help you and your doctor make sure that your medications are working. MTM programs include a free discussion and review of all of your medications by a pharmacist or other health professional to help you use them safely." NCPA has advocated for this change for several years.

Regarding preferred network plans, there are now a total of 6 preferred network plans available to Medicare beneficiaries, a 50% increase over last year. NCPA remains very concerned with

This week submitted a letter to CMS regarding our  
The letter is available on the Advocacy Center website.

**CMS Releases Final Rules Regarding ESRD Program and Medicare Part B:** CMS released its Final Rule for 2012 regarding the End Stage Renal Disease (ESRD) program. NCPA's comments on the Proposed Rule focused on opposing the movement of oral-only drugs from Part D to the ESRD Part B bundled system. In the Final Rule, CMS said they will address the transition of oral-only drugs in future rulemaking. For now, as of 2014, all oral-only ESRD drugs currently covered under Part D will be transitioned to the Part B ESRD bundle. CMS also released its Final Rule for the Part B program for 2012. NCPA's comments on the Proposed Rule focused on increasing supplying/dispensing fees and extreme under reimbursement that pharmacies are receiving for drugs like albuterol and budesonide. In the Final Rule, CMS deemed such comments to be beyond the scope of the Final Rule and refused to respond to our comments.

**NCPA Submits Comments to CMS Regarding DUR Edits:** NCPA submitted comments to CMS regarding recent proposals to strengthen the DUR process within Part D. NCPA asked CMS to work with plan sponsors to ensure that existing claim-level edits in place are improved. With regard to beneficiary level DUR controls, NCPA expressed concern that CMS make sure that any such controls are consistent across all Part D plans. NCPA also urged CMS to avoid requiring hard edits at the point-of-sale for prescriptions that facially violate clinical upper thresholds or medical necessity standards. Finally, NCPA asked CMS to require that Part D plans create a process for medical necessity review, whereby pharmacists are not held financially responsible for situations which may be beyond their control. Moreover, once a prescription passes such a medical necessity review, pharmacists and pharmacies should be immune from any future recoupment efforts that may arise from post-hoc medical necessity redeterminations or reviews.

**NCPA Submits Comments on State Insurance Exchanges:** NCPA submitted comments to HHS on the establishment of state insurance exchanges and qualified health plans. The exchanges need to be operational in states by 2013 so consumers and small businesses can purchase insurance for 2014.

NCPA comments focused on pharmacists as essential community providers, pharmacy network adequacy and the importance of PBM transparency requirements of PBMs that will serve exchange health plans. Specifically, NCPA recommended the following:

- HHS should adopt the Department of Defense/TRICARE standard for pharmacy access in plans offered through the state exchanges.
- Specifically, in terms of payments to PBMs by manufacturers and other entities, NCPA suggested a definition of "indirect compensation" to reflect revenue retained by PBMs in addition to rebates.
- Adopt a more transparent process for evaluating proposed changes to plans in the health exchanges than the state plan amendment (SPA) process currently employed in Medicaid. For example, proposed changes could be publicly disclosed in advance of HHS' ruling on them.



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**U.S. Congress:** NCPA participated in political events this past week for House Speaker John Boehner (R-OH); Rep. Joe Wilson (R-SC): Chairman of the House Armed Services Subcommittee on Military Personnel; Rep. Martha Roby (R-AL): Member of the House Armed Services Committee; and, Sen. Thad Cochran (R-MS): Ranking Member of the Senate Appropriations Committee

**Congressional Leadership Fund:** NCPA Members Mark Riley and Steve Giroux attended a reception hosted by House Republican Leadership including Speaker Boehner, House Majority Leader Rep. Eric Cantor (R-VA), House Majority Whip Rep. Kevin McCarthy (R-CA), NRCC Chairman Rep. Pete Sessions (R-TX), Chief Deputy Whip Rep. Pete Roskam (R-IL) and NRCC Deputy Chairman Rep. Greg Walden (R-OR).

**National Republican Senatorial Committee:** Attended NRSC Fall Retreat with Senators Alexander (TN), Brown (MA), Burr (NC), Chambliss (GA), Coats (IN), Cochran (MS), Cornyn (TX), Crapo (ID), Enzi (WY), Inhofe (OK), Isakson (GA), Johnson (WI), McConnell (KY), Paul (KY), Portman (OH), Risch (ID), Roberts (KS), and Thune (SD).