

Federation of Pharmacy Networks

30131 Town Center Drive, Suite 100

Laguna Niguel, CA 92677

<http://www.fpn.org>

Phone: 949-495-5257

FAX: 949-495-1258

info@fpn.org

NCPA 43rd Annual Legislative Conference Washington, D.C. – May 23-25, 2011

Synopsis of Key Discussions:

CMS

CMS Medicaid Pharmacy & Medicare Part D Updates

Joseph Fine and Tracey McCutcheon provided panel discussion regarding CMS. Joe explained in detail, the ongoing process of establishing appropriate dispensing fees. Both Oregon and Kentucky have established average dispensing fees in the neighborhood of \$9.76 based on data collected from surveys. He indicated that any states proposing uniform dispensing fees for reimbursement would be required to provide completed study to CMS to verify any proposed fee changes.

McCutcheon provided information regarding PBM's and spent time discussing the alleged complaints of "restriction of trade" issues. She explained that because patients are able to choose between mail order and retail pharmacy in most plans, CMS does not view actions of PBM's as restriction of trade. Although the price variance seems to force patients to mail order (from the retail pharmacy perspective), in her view, due to the fact that they still have a choice, a true restriction of trade does not exist. Obviously, her view is opposed by NCPA who continues to pursue actions with the FTC.

Long Term Care

The short cycle medication requirement will be going into effect next year. They have settled on 14-Day supplies however for those who supply 7-Day supplies, the reporting requirements will be eliminated. The 14-Day supply will come with reporting requirements at the pharmacy level.

Senator Herb Kohl, (R-WI) – sponsoring bill to allow nurses in long term care facilities to call in scheduled prescription drugs. This has been supported by NCPA in theory. Due to concerns of the DEA however with drug diversion, the proposed legislation is extremely cumbersome and in my opinion places undue liability on pharmacists (as it is currently written). Pharmacists will be responsible for obtaining written prescriptions within 5 days for all long term care facilities. Those who do not follow the strict requirements will face penalties/fines. Tracking of "approved" nurses will be the responsibility of each pharmacy. Due to the strong opposition from the DEA, this bill (as written) will not provide resolution to the time lapse problems in the long term care facilities.

Medicare

Another piece of good news during the annual conference was the introduction of a legislation that would exempt most independent community pharmacies from the Medicare competitive bidding program for diabetes testing supplies. Reps. Aaron Schock (R-Ill.) and Peter Welch (D-Vt.) did the honors with H.R. 1936, the Medicare Access to Diabetes Supplies Act. The bill also permits small, community pharmacies with 10 or fewer locations to continue providing home delivery of these products without them being subject to the future national mail order competitive bidding program.

Legal – CVS/Caremark

Several attorneys weighed in on the CVS/Caremark litigations currently taking place. Miguel Rodriquez who represents the group of plaintiffs from American Pharmacies provided an update on their litigation. Currently, they are working to avoid arbitration and force the action into open court. Because all contracted pharmacies sign an arbitration agreement as part of the contract terms, the case may be forced to an arbitrator. However, Rodriquez explained that the results of arbitration can still be used to back up future class action suits pending the result of this litigation.

State Panel Discussion

The take away message is to get involved at the state level now. The Affordable Care Act is not going away but the template for implementation is being crafted at the state level. Each state is attempting to manage the mandate and pharmacy needs to be represented. Silence will allow PBM's to control the discussions which include to date in California a mandate for CalPers recipients (for state employees) to use mandatory mail order.

Key Legislation Currently Active on Capital Hill

The bipartisan Pharmacy Competition and Consumer Choice Act of 2011 was introduced in both the Senate and the House. Sens. Mark Pryor (D-Ark.) and Jerry Moran (R-Kan.) are the chief sponsors of S. 1058. Pryor addressed NCPA's pharmacist rally on the grounds of the Capitol May 25 before the attendees fanned out to House and Senate offices for more than 200 scheduled meetings with lawmakers and their aides.

A companion measure, H.R. 1971, was dropped by Reps. Cathy McMorris Rodgers (R-Wash.) and Anthony Weiner (D-N.Y.). Weiner spoke to conference participants during a general session May 24. He also is the sponsor of H.R. 1839, which would allow groups of independent community pharmacies an antitrust exemption to negotiate contract terms with health plans and PBMs. Rep. Tom Marino (R-Pa.) introduced H.R. 1946, a similar measure.

H.R. 1971 and S. 1058 would:

- Give patients a true choice of pharmacy by protecting them from having limited access or being financially punished for having their prescription filled at a community pharmacy rather than one owned by their plan's PBM.
- Allow legitimate oversight for fraud, not abusive pharmacy audits conducted by commission-driven bounty-hunters over minor typographical or clerical errors.
- Help eliminate wasteful pharmaceutical spending generated by PBMs switching patients to costlier drugs, hoarding manufacturer rebates, and billing plans inflated amounts for prescription claims.
- Level the playing field among pharmacies by allowing "any willing provider" that agrees to accept a health plan's terms and reimbursement rates to participate in that plan.