

NCPA Advocacy Center Update
Week Ending May 11, 2018

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President Trump Unveils Plan to Tackle High Prescription Drug Prices

Earlier today, President Trump and HHS Secretary Azar unveiled the President’s [Blueprint to Lower Drug Prices](#) (titled “[American Patients First](#)”). The president called out PhRMA manufacturers but also didn’t ignore the middle-man in his comments. NCPA has for several years made the point that PBM middlemen contribute to increasing drug prices and any solution to this issue must address their role. Most recently, NCPA CEO B. Douglas Hoey sent a letter to CMS highlighting these concerns. Additionally, NCPA staff met with HHS officials just a few weeks ago. Some of the proposals the administration will pursue include:

- **DIR Fees:**
 - The Administration is attacking retroactive fees in all directions. First, the Blueprint outlines the Administration’s intent to address rebates head on. In fact, Secretary Azar specifically stated at today’s press conference that HHS is looking into getting rid of all rebates and going to a flat price which would effectively take away incentives for PBMs to make more money. The proposal also focuses on ongoing efforts to require applying all pharmacy price concessions, aka DIR fees, to the price of a drug at the point of sale, NCPA’s top priority.
- **Fiduciary feedback:**
 - The President is also seeking feedback on requiring Pharmacy Benefit Managers to act in the best interests of payers. NCPA has been a long supporter of requiring more regulation of PBMs and requiring a fiduciary duty is a step in the right direction because PBMs will have to answer for their murky practices. More transparency is a win for pharmacists on the DIR front because DIR fees are a creature of their opaque practices.
- **Gag clause**
 - The President’s plan calls for immediate action to prohibit “gag clauses” in Part D contracts. NCPA has long warned that under some contracts, pharmacists have been unable to inform patients that they could pay less out-of-pocket by not using insurance. Prohibiting this action is a win for pharmacies worried that their PBM will retaliate

against the pharmacy for looking out for the best interests of the patient. NCPA will also advocate to ensure that pharmacists be allowed to tell patients when the pharmacy is being reimbursed below their cost to acquire the drug.

Additionally, Rep. Buddy Carter (R-Ga.) was one of the honored guests and NCPA member John Kim, owner of Robinson Drug & Compounding Center in Mendham, NJ, was invited to attend the president's Rose Garden announcement.

NCPA has also been invited to meet with administration officials Monday morning to discuss the plans in detail. Sec. Azar will speak at the meeting, and NCPA will keep you apprised of additional information as it becomes available.

HHS Secretary Alex Azar to Seek Inspector General Investigation into Retroactive DIR Fees

At a Thursday hearing, HHS Secretary Alex Azar said he plans to ask the department's inspector general to investigate price concessions that pharmacy benefit managers retroactively charge pharmacies.

"Are these DIR fees essentially taxes imposed differentially and unpredictably on those independent pharmacies in a way that puts them at a competitive disadvantage from the owned ones?" Azar asked during testimony before the Senate Appropriations subcommittee, referring to PBM-owned pharmacies. "I think this is an important issue worthy of study because as you said there should be a level playing field and there should be good competition so I'm going to ask the IG at HHS to look into this issue."

Azar's statement was in response to questions from Sen. James Lankford (R-OK). An Oklahoma NCPA member spoke with Sen. Lankford at the recent NCPA Congressional Pharmacy Summit about the issue. Because of that conversation and at NCPA's urging, he asked how CMS is protecting small independent pharmacies, especially those in rural areas. He said many of his constituents prefer buying their medications in person, so they can ask questions, but he fears price concessions are a tool to run independent pharmacies out of business.

Energy and Commerce Committee Marks-up Opioid Legislation

On May 9, 2018, the House Energy and Commerce Committee advanced 25 primarily bipartisan bills to address the opioid crisis, including legislation to enhance prevention and privacy-related initiatives, modify Medicare Parts B and D coverage and payment policies, and update Food and Drug Administration (FDA) policies. The Committee also adopted legislation to reform the over-the-counter (OTC) drug approval process and reauthorize animal drug and generic animal drug user fee programs. Two bills endorsed by NCPA, H.R. 3528, *the Every Prescription Conveyed Securely Act*, which maintained provisions sought by NCPA to exempt long-term care patients and to ensure that patients' choice of pharmacy is respected, and H.R. 4275, *the Empowering Pharmacists in the Fight Against Opioid Abuse Act*, were among those passed by the committee that will now head to the House floor.

Ways and Means Committee Schedules Mark-up of Opioid Legislation

Next Wednesday, May 16, the House Ways and Means Committee will also begin to address the opioid crisis. The committee will mark-up four bipartisan legislative packages that include provisions from several bills that Congress has been reviewing. Several of the provisions have already been considered and approved by the House Energy and Commerce Committee. NCPA will continue monitoring the advancement of opioid legislation and advocating for pharmacists to be able to best serve their patients.

House E&C Subcommittee on Oversight Calls on Drug Wholesalers to Testify

On May 8, 2018, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing entitled, "Combating the Opioid Epidemic: Examining Concerns About Distribution and Diversion," where executives from 5 nationwide and regional drug distributors (AmerisourceBergen, Cardinal Health, McKesson, H.D. Smith, and Miami-Luken) testified on potential breakdowns in the controlled substances distribution system and their role in the opioid crisis. Members on both sides of the aisle sharply criticized drug distributors for failing to identify and stop shipments of suspicious orders of opioids in West Virginia, which the Subcommittee has examined extensively as a case study over the past year. Members repeatedly cited the distributors' statutory responsibility under the Controlled Substances Act (CSA), and noted specific examples of pharmacies that were supplied significant quantities of opioids far exceeding local needs. Members from both parties asked the distributors to explain how "red flags" were missed and over-shipments continued after Drug Enforcement Administration (DEA) enforcement actions and settlements. When asked by Chairman Harper if their actions or the actions of their companies contributed to the opioid epidemic, all of the witnesses responded negatively except the Board Chairman of Miami-Luken, Inc. All of the witnesses, except one no longer working in the industry, agreed to provide information regarding potential over-shipments of opioids in communities outside West Virginia.

60 Minutes Stunner: ESI Claims Not "Contractually Obligated" to Contain Costs

This past Sunday night's broadcast of "60 Minutes" highlighted an issue that community pharmacy knows all too well. The segment, "The Problem with Prescription Drug Prices," told the story of Rockford, Ill., and the high prices the city pays for its employee prescription drug program, managed by Express Scripts, the nation's largest PBM. In perhaps the most stunning admission in the 14-minute segment, Express Scripts said in a court filing that it was not "contractually obligated" to contain costs. The story shows, once again, that plan sponsors are not well served by PBMs, that PBMs are contributing to the high price of drugs, and that pharmacists should be part of alternative ways to manage drug costs.

NCPA Joins Effort to Accurately Match Patients with Their Health Information

NCPA signed onto a letter (see attached) this week addressed to leadership of the House and Senate Appropriations Committees seeking inclusion of report language in the Labor-HHS Appropriations bill that would allow for accurate matching of patients with their health information. This report language would clarify Congressional intent and would enhance patient safety. Other signatories on the letter included organizations such as the American Medical Association, Healthcare Leadership Council, and the Pew Charitable Trusts.

CMS Releases Rural Health Strategy

This week, CMS released a new [strategy](#) to boost health care access in rural communities, including through telemedicine. Many of the 60 million people who live in rural areas receive Medicaid or Medicare, but uninsurance is high. In addition, rural areas have trouble attracting providers, particularly specialists, and it's hard to keep hospitals open. CMS said that the strategy would tackle a number of issues, including how to improve reimbursements for rural providers, recruit and train health care workers and make health care options more affordable. NCPA will discuss the strategy with CMS further detail, highlighting the important role independent pharmacies play in rural areas and asking CMS to move forward quickly on policies that will allow these rural providers to remain in business.

NCPA Participates on NCSL panel

This week Matt Magner, NCPA's Director of State Government Affairs, participated on a panel discussion at the National Council of State Legislatures (NCSL) Insurance Task Force meeting in Denver. The topic of

the discussion was “Pharmacy Costs & Pharmacy Benefit Managers.” His comments focused on how opaque PBM-contract provisions lead to increased costs for patients and plan sponsors and unsustainable reimbursements for community pharmacies. Members of the task force were engaged and discussed the PBM-transparency issues that are happening in their own states.

NCPA Participates in National Leadership Summit on 340B

This past Monday, NCPA’s Kala Shankle, Director of Regulatory Affairs, attended the National Leadership Summit on 340B. Speakers from across the industry spoke on potential issues and successes of the Program and what the future for reform could look like. Staff from Rep. Buddy Carter’s (R-GA) office spoke on a legislative panel. Staff outlined the congressman’s new bill which would require hospitals to report to HHS and Congress the annual amount of low-income patients served at their hospitals in the outpatient setting. The bill would provide Congress with a better understanding of how hospitals serve patients under the 340B Program and illuminate further action Congress could take down the road.

NCPA Attends NABP Annual Meeting

Allie Jo Shipman, NCPA Associate Director of State Government Affairs, attended the National Association of Boards of Pharmacy (NABP) Annual Meeting this past weekend. The meeting included a session on updates to USP general chapters <795> and <797> and the affect those updates would have on <800>. NCPA also hosted a breakfast for our members serving on state boards of pharmacy to provide advocacy updates and discuss members’ state regulatory concerns and issues.

In the States ...

- **Alaska** [HB 240](#), which relates to PBM registration, fair pharmacy audits, MAC pricing transparency, and pharmacists’ communication with patients, has passed both chambers.
- **Louisiana** [SB 130](#), which relates to contract requirements for Medicaid pharmacy benefit management services, was passed with amendments in the House and returned to the Senate.
- **Louisiana** [SB 241](#), which relates to pharmacists’ communication with patients, has passed both chambers.
- **Louisiana** [HB 436](#), which relates to the regulation of pharmacy benefit managers, was passed with amendments in the Senate and returned to the House.
- **Maryland** [HB 1349](#), which relates to MAC pricing transparency and provides for additional oversight of PBMs by the insurance commissioner, was approved by the governor.
- **South Carolina** [H 5038](#), which establishes prohibited acts for a pharmacy benefit manager, was signed by the governor.