



Capitol Agenda

THE INDEPENDENT FORUM

INDEPENDENT PHARMACY COOPERATIVE

August 2016

DEA Strict Enforcement Relief

S. 483 [Hatch R-UT] & H.R. 471 [Marino R-PA] Signed in Law

After overwhelming bipartisan passage in Congress, on April 19 President Obama signed into law the Ensuring Patient Access and Effective Drug Enforcement Act of 2016 (S.483).

The new law has the dual aim of reducing prescription drug abuse while ensuring access for patients with legitimate medical need. Common sense reforms to the DEA process of addressing control drug abuse and diversion were included. The major change from this drug multi-industry initiative focuses on a cooperative effort at corrective action rather than the punitive DEA enforcement against pharmacies and distributors as the first course of action.

Iowa Insurance Commissioner Granted PBM Regulatory Authority

PBMs Find Little Success in the Courts



Rules finalized in June will give the Iowa Insurance Division the authority to fully regulate Pharmacy Benefit Managers (PBMs) in Iowa.

The Iowa Insurance Division now has explicit authority to audit PBMs and request information, including pricing methodology for generic drug prices.

Additionally, after losing the first two attempts to block enacted Maximum Allowable Cost (MAC) legislation, the Pharmaceutical Care Management Association (PCMA), which represents the nation's leading PBMs, asked the 8th Circuit Court of Appeals to block full implementation of Iowa MAC law.

CMS Promulgates Final AMP Regulation

The Centers for Medicare and Medicaid Services (CMS) promulgates the final Federal Upper Limit (FUL) regulation that requires state Medicaid programs to reimburse pharmacies based on Actual Acquisition Cost (AAC) rather than Estimated Acquisition Cost (EAC).

States risk losing federal matching dollars if the annual aggregate reimbursement to pharmacies exceeds the CMS established FUL. States can

establish AAC based on several benchmarks including National Average Drug Acquisition Cost (NADAC) files, Average Manufacturer Price (AMP), surveys or even Wholesale Acquisition Cost (WAC). The vast majority of states will need to undergo a State Plan Amendment (SPA) and have until April 1, 2017 to submit and acquire CMS approval.

In a welcome announcement, CMS stated that the FUL cannot be lower than the surveyed NADAC price. It is important to note that CMS requires a corresponding professional dispensing fee based upon objective data and surveys. While the AAC model is not applicable to Medicaid Managed Care, states such as Kansas may require the reimbursement methodology for all private and government Medicaid plans.



Lawsuit Accuses Express Scripts of Stealing Customers

It has not been a good year for Express Scripts. Two recent lawsuits, one brought by payers seeking more than \$200 million in damages and another seeking class action status by pharmacies, have been filed against Express Scripts Inc. in Missouri District Court. In the latter case, the complaint alleges Express Scripts improperly used customer information and prescription data to divert customers to its own mail order pharmacy business or "slamming". Express Scripts is accused of unfair competition, breach of contract, breach of implied covenant of good faith and fair dealing, interference with prospective economic advantage, violation of the Uniform Trade Secrets Act, and fraud.

Express Scripts' contracts give them access to customer data to verify that beneficiaries are eligible for prescription coverage and to collect insurance payments. Of concern, is that not all information required to be shared by the pharmacy is necessary for claim administration. The complaint states that Express Scripts has used the data to identify the most profitable prescriptions for their mail conversion program in order to switch refills without the customer's knowledge or consent. In what now seems like a common event, Express Scripts finds itself in court defending its opaque business practices from payers, customers and providers.

Express Scripts & Anthem Accused of Violating Federal ERISA Laws

In a lawsuit filed on 6/24/2016, Express Scripts and Anthem Inc. face a proposed class action lawsuit alleging the companies breached their fiduciary duties under the federal ERISA statute. ¹ The complaint argues that Anthem used Express Script's nearly \$5 billion payment to secure the exclusive Anthem contract to fund stock buybacks which ultimately benefited Anthem's stockholders and management, rather than plan participants. The lawsuit follows closely on the heels of another legal challenge earlier this year when Anthem sued Express Scripts for allegedly overcharging for prescription drugs in violation of the parties' agreement. Despite assurances from the PBM lobby, the lack of transparency continues to plague the PBM industry.

¹ Burnett v. Express Scripts, Inc., S.D.N.Y., No. 1:16-cv-04948 2016

National Insurance Group Moves to New Model PBM Legislation

The National Association of Insurance Commissioners (NAIC) meets on August 26 in San Diego to continue PBM model act language review and will consider revisions to the Health Carrier Prescription Drug Benefit Management Model Act (#22) to address issues related to: a) transparency, accuracy and

disclosure regarding prescription drug formularies and formulary changes during a policy year; b) accessibility of prescription drug benefits using a variety of pharmacy options; and c) tiered prescription drug formularies and discriminatory benefit design. The move is one step closer to a final model act.



1550 Columbus Street
Sun Prairie, WI 53590

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Mark Kinney

Mark Kinney is the Senior Vice President of Government Relations at IPC. With more than 15 years of state and federal legislative experience, Kinney represents independent pharmacy nationwide. He has participated in numerous legislative conferences and committees and is a noted speaker for state and national pharmacy events.



Jim Driscoll

IPC Director of Government Relations Jim Driscoll focuses his state efforts on community pharmacy issues, including Medicaid reimbursement, unfair audit requirements and PBM transparency. Driscoll targets individual state concerns and provides assistance for passage of pro independent pharmacy legislation relating to these topics.



John Covello

Director of Government Relations John Covello brings more than 20 years of rich background in governmental relations at the local, state and federal level. John directs IPC's legislative and regulatory initiatives in key states as well as assists on IPC's federal efforts for community pharmacy.



Brad Young

Brad Young brings extensive government affairs experience to IPC having served 11 years in the Colorado House of Representatives. Young has participated in effective lobbying efforts on issues such as Medicaid Reimbursement rates, pharmacy audits, drug substitution, drug discount cards, and many others.

IPC Government Relations Team

Email us at governmentrelations@ipcrx.com or call 800.755.1531.