The 2021 Advocacy Annual Report is a comprehensive review of NCPA's advocacy efforts on behalf of America's independent community pharmacists over the past year. We represent our members before Congress, in the regulatory arena, in the courts, and in the states. Our work is enhanced by the grassroots efforts of NCPA members, the NCPA Legislative/Legal Defense Fund, and the NCPA Political Action Committee. The NCPA Advocacy Center works to advance policies and solutions that are pro-patient, pro-pharmacy, and pro-small business.

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ON CAPITOL HILL AND WORKING WITH AGENCIES

Progress has been made in advancing NCPA’s member-focused congressional legislative priorities, fighting on behalf of community pharmacy owners.

**Federal legislation**

**Pharmacy DIR Reform to Reduce Senior Drug Costs Act (S. 1909/H.R. 3554):** Would reduce patients’ cost-sharing, prevent plans and pharmacy benefit managers from clawing back pharmacy DIR fees, enhance price transparency, and establish consistent pharmacy performance measures that foster quality care and enhance the viability and predictability of pharmacy operations. Introduced by Sens. Jon Tester (D-Mont.), Shelley Moore Capito (R-W.Va.), Sherrod Brown (D-Ohio), and James Lankford (R-Okla.) and Reps. Peter Welch (D-Vt.), Morgan Griffith (R-Va.), Vicente Gonzalez (D-Texas), Buddy Carter (R-Ga.), Raja Krishnamoorthi (D-Ill.), John Rose (R-Tenn.), Abigail Spanberger (D-Va.), and Diana Harshbarger (R-Tenn.).

**Ensuring Seniors Access to Local Pharmacies Act (H.R. 4946):** Would allow community pharmacies that are in medically underserved areas, medically underserved populations, health professional shortage areas, or Federal Office of Rural Health Policy’s designated rural areas to participate in Medicare Part D preferred pharmacy networks so long as they are willing to accept the contract terms and conditions. It also would require that pharmacies be reasonably reimbursed so that PBMs are not reimbursing their affiliated pharmacies more than they do other pharmacies and that reimbursement covers acquisition and dispensing costs. Introduced by Reps. Peter Welch (D-Vt.) and Morgan Griffith (R-Va.).

**Drug Price Transparency in Medicaid Act of 2021 (H.R. 6101):** Would provide accountability in Medicaid managed care programs by preventing abusive spread pricing, increasing transparency, and reimbursing based on the average cost of the prescription drug. Introduced by Reps. Buddy Carter (R-Ga.) and Vicente Gonzalez (D-Texas).

**Pharmacy and Medically Underserved Areas Enhancement Act (S. 1362/H.R. 2759):** Would provide Medicare payment for pharmacist services in medically underserved areas. Introduced by Sens. Chuck Grassley (R-Iowa), Sherrod Brown (D-Ohio), and Bob Casey (D-Pa.) and Reps. G.K. Butterfield (D-N.C.) and David McKinley (R-W.Va.).

**Patient Access to Urgent-Use Pharmacy Compounding Act (H.R. 3662):** Would allow compounding of drugs for urgent use and drugs in shortage for administration in hospitals and other clinical settings. Introduced by Reps. Morgan Griffith (R-Va.) and Henry Cuellar (D-Texas).

**PBM Accountability Study Act of 2021 (S. 298/H.R. 1829):** Would require the United States Government Accountability Office to conduct a study into ways to increase transparency of PBMs. Introduced by Sen. Marcia Blackburn (R-Tenn.) and Rep. Diana Harshbarger (R-Tenn.).

**Improving Transparency to Lower Drug Costs Act (H.R. 3682):** Would provide transparency into how PBMs are operating in Medicare Part D by requiring PBMs to report their aggregate pharmacy DIR fees, rebates, discounts, and other price concessions for prescription drugs to a public website. Currently, these figures are only available to CMS, not the public. Introduced by Reps. Abigail Spanberger (D-Va.) and Jodey Arrington (R-Texas).

**Pharmacy DIR reform activity**

CMS data shows pharmacy DIR fees increased 91,500% from 2010-2019: CMS and HHS released a joint statement to further explain the administration’s requests as part of the budgeting process. The agencies recognized the impact of DIR fees and price concessions on the increasing cost of drugs in Medicare Part D, stating: “pharmacy price concessions, net of all pharmacy incentive payments, grew more than 91,500 percent between 2010 and 2019.” NCPA will continue to advocate for CMS and Congress to address DIR fees through regulatory and legislative action, including advocating for passage of S. 1909/H.R. 3554, the Pharmacy DIR Reform to Reduce Senior Drug Costs Act.
DIR bill sponsors remind CMS it has authority to act on pharmacy DIR fees: In October, House and Senate sponsors of pharmacy DIR fee reform legislation sent letters to CMS Administrator Chiquita Brooks-LaSure to raise concerns about the impact of DIR fees on patients and pharmacies. They urged CMS to work with Congress to require pharmacy price concessions, payments, and fees be included at the point of sale under Medicare Part D in a manner that lowers out-of-pocket costs and premiums. They also reminded Brooks-LaSure that Congress has already provided CMS with sufficient authority to make changes administratively. In December, Brooks-LaSure responded to these members of Congress, stating: “The agency has continued to study the role that pharmacy price concession fees play in the prescription drug marketplace. CMS agrees that the significant growth in DIR amounts is troubling and is planning to use our administrative authority to issue proposed rulemaking addressing price concessions and DIR.”

Congressional action on pharmacy DIR fees urged by 250 organizations: In June, 250 organizations voiced support for S. 1909/H.R. 3554, the Pharmacy DIR Reform to Reduce Senior Drug Costs Act. In letters to the House and Senate bill sponsors, the organizations thanked them for their leadership and urged swift congressional action on the bills. A coalition of national pharmacy organizations consisting of the American Pharmacists Association, FMI - the Food Industry Association, National Association of Chain Drug Stores, National Association of Specialty Pharmacies, and National Grocers Association joined NCPA in hand delivering the letters to bill sponsors. Prior to delivering the letters, the organizations made remarks on the importance of pharmacy DIR reform at an event held at Grubb’s Pharmacy on Capitol Hill with NCPA Vice President Dr. Michael Kim, owner of Grubb’s Pharmacy and three other pharmacies in Washington, D.C.

Brooks-LaSure’s response to House and Senate sponsors of pharmacy DIR fee reform legislation.

From L-R: Jennifer Hatcher (FMI), Julie Allen, (NASP), Anne Cassity, (NCPA). Rep. Peter Welch (D-Vt.), Rep. Morgan Griffith (R-Va.), Amber Manko (NACDS), Robert Yeakel (NGA), and Alicia Kerry Mica (APhA)
Congressional action on NCPA issues

Sens. Grassley and Wyden release insulin pricing report: In January, Senate Finance Committee Chairman Ron Wyden (D-Ore.) and Ranking Member Chuck Grassley (R-Iowa) released a report on their bipartisan investigation into the skyrocketing costs of insulin. The report calls out the role PBMs played in the rising costs and noted that there appeared to be little, if any, attempt by PBMs to discourage manufacturers from increasing the list price of their products. The investigation found that PBMs used their size and aggressive negotiating tactics, like the threat of excluding drugs from formularies, to extract more generous rebates, discounts, and fees from insulin manufacturers.

HHS Secretary Designee Becerra questioned on role of PBMs during confirmation hearings: In February, the Senate Health, Education, Labor, and Pensions and Finance Committees held hearings on the nomination of Xavier Becerra (D-Calif.) to be the secretary of HHS. In the HELP Committee hearing, Sens. Tommy Tuberville (R-Ala.) and Roger Marshall (R-Kan.) asked Becerra about the role of PBMs and how he would handle their impacts on pharmacies and patients as secretary. Becerra alluded to the role he played as California attorney general in supporting the Rutledge v. PCMA case, which gave states more ability to rein in PBM practices, and also noted there was a need for federal oversight and reform of PBMs.

NCPA advocates against small business tax increases: NCPA joined several efforts to prevent tax increases on small businesses including joining other small business organizations on joint letters opposing proposed changes to the deduction for qualified business income, opposing a Treasury Department proposal that would require financial institutions to report to the IRS on the deposits and withdrawals of all business and personal accounts, and urging preservation of the current protections from increased taxes on family-owned businesses.

House subcommittee hearing on drug pricing: The House Energy and Commerce Health Subcommittee held a hearing in May examining policies allowing the secretary of Health and Human Services to negotiate prices in the Medicare Part D program, place inflation caps on pharmaceutical products, limit the use of citizen petitions at the Food and Drug Administration, cap seniors’ out of pocket costs in Medicare Part D, and end “pay for delay” arrangements between branded drug companies and generic competitors. Rep. Peter Welch (D-Vt.) highlighted the need to finalize pharmacy DIR reform as a part of any drug pricing package, and Rep. Buddy Carter (R-Ga.) commented on the role that PBMs play in raising drug costs and the need to rein in their practices.

Rep. Harshbarger says PBMs bear responsibility for increased health care costs: In May, the House Labor and Education HELP Subcommittee held a hearing focusing on H.R. 3 and the responsibility of pharmacy benefit managers on the cost of prescription medications. Rep. Diana Harshbarger (R-Tenn.), one of two pharmacists in Congress, emphasized the fact that more responsibility needs to be put on PBMs in regard to increased prescription drug costs.

"The byzantine, manipulative behavior of PBMs has been catching up with them, but greater transparency into the games they play with drug rebates is still needed. Too many patients continue to suffer due to PBM shenanigans, and too many pharmacies have been wiped out as a result of drug payment system pressures. We’re pleased to endorse the Improving Transparency to Lower Drug Costs Act reintroduced by Reps. Spanberger and Arrington and support their efforts to rein in the PBMs," said B. Douglas Hoey, Pharmacist, MBA, CEO of the National Community Pharmacists Association.
House Energy and Commerce Consumer Protections Subcommittee holds FTC hearing: In July, the House Energy and Commerce Committee’s Subcommittee on Consumer Protection and Commerce held a hearing entitled, “Transforming the FTC: Legislation to Modernize Consumer Protection.” The hearing allowed members to question all FTC commissioners. In opening remarks, Commissioner Rohit Chopra testified how independent community pharmacies, which have played a vital role during the COVID-19 pandemic, are at the mercy of PBM middlemen that use tactics to drive the pharmacies out of business. Chopra also emphasized the need for reforms to ensure the agency is more responsive to small businesses.

Senate Judiciary Committee considers Grassley drug pricing bill: In July, the Senate Judiciary Committee met to consider several pieces of legislation and nominations. Among the bills considered was S. 1388, the Prescription Pricing for the People Act of 2021, sponsored by Sens. Chuck Grassley (R-Iowa) and Maria Cantwell (D-Wash.). The NCPA-endorsed legislation would require the FTC to examine the anticompetitive PBM practices and the effects of PBM consolidation and vertical integration on drug pricing, and provide policy recommendations to Congress to improve competition and protect consumers. The committee advanced the legislation on a voice vote, and Chairman Dick Durbin (D-III.), along with Sens. Chris Coons (D-Del.) and Cory Booker (D-N.J.) all requested to be added as cosponsors of the legislation.

Senate hearing investigates prescription drug prices: In March, the Senate HELP Subcommittee on Primary Health and Retirement held a hearing titled, “Why Does the U.S. Pay the Highest Prices in the World for Prescription Drugs?,” to examine how other countries regulate prescription drug prices and discuss what policies might be needed to lower drug costs in the U.S. While it wasn’t the topic of the hearing, Sen. Roger Marshall (R-Kan.) expressed support and the need for bipartisan legislation to eliminate rebates to PBMs.

NCPA urges greater enforcement against anticompetitive PBM practices: In July, the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights held a hearing to examine competition within the pharmaceutical marketplace. In a statement, NCPA pushed the subcommittee to scrutinize the role of vertically integrated for-profit companies. Among senators speaking at the hearing, Sens. Chuck Grassley (R-Iowa) highlighted how PBMs operate with little transparency, making it difficult for patients and others to understand drug pricing; Josh Hawley (R-Mo.) discussed the need to stop the retroactive collection of pharmacy DIR fees which drive independent pharmacies towards insolvency; and Marsha Blackburn (R-Tenn.) said that Congress should regulate PBMs to protect patients, community pharmacies, and taxpayers from anticompetitive PBM behaviors like audits, patient steering, and clawbacks.

Wyden seeks federal investigation into anticompetitive drug industry practices: In December, Senate Finance Committee Chairman Ron Wyden (D-Ore.) sent a letter to the FTC asking the agency to investigate consolidations in Oregon’s retail pharmacy market to assess whether large national pharmacy chains and health plans have acted to make this market less competitive. “Exploitative business practices conducted by pharmaceutical middlemen are driving locally owned pharmacies out of business,” said Wyden. “These practices are not unique to the Pacific Northwest, so I am calling on the FTC to investigate this trend on a national level so action can be taken to protect local businesses.” Wyden’s letter highlights ongoing industry dynamics such as pharmacy DIR fees that pose significant challenges to small, independent pharmacies.

“Exploitative business practices conducted by pharmaceutical middlemen are driving locally owned pharmacies out of business.”
NCPA co-hosts briefing on Long-Term Care Pharmacy Definition Act of 2021: In July, Premier, NCPA, the American Society of Consultant Pharmacists, and the Senior Care Pharmacy Coalition hosted a briefing with Sens. Tim Scott (R-S.C.) and Mark Warner (D-Va.) on their legislation, S. 1574, the Long-Term Care Pharmacy Definition Act of 2021. The legislation would establish a definition of LTC pharmacy to ensure continued patient access to essential medications and pharmacy services.

House Oversight Committee holds PBM forum: In November, NCPA member Jonathan Grider, PharmD, served on an expert panel of witnesses for a congressional forum focusing on the role of PBMs in increasing drug prices. The forum, titled “Reviewing the Role of Pharmacy Benefit Managers in Pharmaceutical Markets,” was organized by Ranking Member James Comer (R-Ky.) of the House Committee on Oversight and Government Reform. Grider, who owns two pharmacies in Russell Springs, Ky., urged policymakers to rein in harmful PBM practices. As a result of the forum, Comer issued a report outlining how PBM practices increase prescription drug prices, impact patient health, hurt competition, and distort the marketplace.

Wyden urges CMS to act on pharmacy DIR fees: In October, Sen. Ron Wyden (D-Ore.), chairman of the Senate Finance Committee, issued a press release on a request he sent to CMS Administrator Brooks-LaSure for a federal review of pharmacy closures and administrative action to fix pharmacy DIR fees. Specifically, Chairman Wyden asked the agency to review pharmacy closures nationwide over the last five years with a focus on how DIR fees are driving those closures, especially in rural communities. He also urged CMS to “immediately use its authority to stringently regulate pharmacy DIR practices and require all pharmacy price concessions to be included in the negotiated price at the point of sale.”

NCPA urges ban on spread pricing and an end to DIR fees in Build Back Better: Congress hopes to pass its social spending budget reconciliation package in early 2022 to implement President Joe Biden’s Build Back Better plan. The legislation is expected to be a $1.75 trillion package. NCPA has advocated for inclusion of spread pricing prohibitions and DIR fee reform in the package. The House passed its version of the reconciliation bill in November, which left out provisions to eliminate retroactive pharmacy DIR fees and PBM spread pricing games in Medicaid managed care programs. The Senate is still crafting its version, and it is not expected to see a vote until early 2022.

“This is an unfortunate result of the monopsony power of the largest PBMs. We often say that, because the large PBMs account for 77 percent of covered lives, pharmacies can’t refuse to contract with them. The same holds true for plan sponsors, too. The lack of choice almost guarantees that states will have to contract with a PBM that plays manipulative games with taxpayer dollars.”

Anne Cassity
NCPA Vice President,
Federal & State Government Affairs
Ohio Capital Journal – December 14, 2021

Jonathan Grider

“Let’s not be so sanguine about the potential of a 1.75 trillion package. Without additional restrictions, the substantial scope of added spending on Medicaid threatens to reverse the progress that states and providers have made in stabilizing pharmacy payments in the most vulnerable populations. It is now more urgent than ever to reform the current laws that govern pharmacy payments and drug prices.”

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NCPA Endorsed PBM Transparency legislation: U.S. Representatives Abigail Spanberger (D-Va.) and Jodey Arrington (R-Texas) introduced H.R. 3682, the Improving Transparency to Lower Drug Costs Act. This legislation would hold PBMs accountable by requiring PBMs to report their aggregate pharmacy DIR fees, rebates, discounts, and other price concessions for prescription drugs to a public website. NCPA was quoted in the Rep. Spanberger’s press release on the bill.

Regulatory comments

NCPA and others successfully push back on Most Favored Nation model: In response to pressure from NCPA and other stakeholders (see NCPA comments here), CMS issued a final rule to rescind the Most Favored Nation Model interim final rule for Medicare Part B Drugs and Biologicals (summary of the MFN Model here). CMS noted in the rule that all but one of the stakeholder’s responses favored withdrawal of the rule.

340B caught up in litigation: NCPA continues to be in contact with stakeholders involved with the 340B drug pricing program as ongoing litigation moves through the process. As of now, decisions have been issued by courts from Indiana, New Jersey, and Washington, D.C., with both sides claiming victory. Unfortunately, there is a decision split in competing jurisdictions on the same issue, likely resulting in further litigation and it eventually becoming a matter for the U.S. Supreme Court.

NCPA urges Fed to enforce routing law and reduce debit rate interchange fees: NCPA submitted comments to the Board of Governors of the Federal Reserve System regarding a proposed clarification that would protect a patient’s ability to obtain prescriptions online and in a safe manner during the ongoing COVID-19 pandemic. NCPA urged the Fed to reduce the regulated debit interchange rate, which has not been adjusted since it went into effect a decade ago, which forces merchants to bear more than a proportional burden of handling and fraud costs. We are awaiting notice from the Fed.

NCPA pushes against regulatory burden of Corporate Transparency Act: NCPA submitted comments on implementation of the Corporate Transparency Act, which would require corporations, limited liability companies, and similar entities to report certain information about their beneficial owners. NCPA comments highlighted the financial burden of regulatory compliance and requested that the Financial Crimes Enforcement Network remove several items based on lack of authority, detail the protocols it will implement to authenticate requests for beneficial ownership information, and delay implementation of the new reporting requirements until the end of the COVID-19 PHE. FinCEN is moving forward with the next stage of the rulemaking process by releasing a Notice of Proposed Rulemaking.

NCPA pushes FTC to act on anticompetitive contractual terms used by PBMs: NCPA submitted comments to the FTC, continuing to highlight a number of issues on the inequities of PBM market power and anticompetitive behavior when it comes to contracting with independent pharmacies. In response to continued abuses by the PBMs, NCPA requested the FTC issue a rule limiting terms which favor affiliated over non-affiliated pharmacies. Additionally, over 2,500 independent pharmacy advocates from around the country sent 3,076 emails and completed 272 twitter shares on the impact of these anticompetitive practices.

NCPA weighs in on pharmacist scope of practice issues and more in 2022 Physician Fee Schedule rule: NCPA submitted comments to CMS in response to its calendar year 2022 Medicare physician fee schedule proposed rule. NCPA comments focused on pharmacist scope of practice issues, pharmacist payment for COVID-19 and preventive vaccine administration in Medicare beneficiaries’ homes, pharmacist provided telehealth services, Electronic Prescribing for Controlled Substances in LTC facilities, and extending current flexibilities in the Medicare Diabetes Prevention Program beyond the COVID-19 PHE. In the final rule CMS declined to extend payments retroactively for COVID-19 vaccine administration and delayed implementation of EPCS until Jan. 1, 2023 (Jan. 1, 2025 for LTC).

PHARMACY VISITS

Senate Finance Committee Chairman Ron Wyden (D-Ore.) visited Grants Pass Pharmacy, owned by NCPA President Michele Belcher.
NCPA continues regulatory push with executive agencies: NCPA CEO Douglas Hoey participated in a roundtable with HHS Secretary Becerra in June to discuss the impact of pharmacy DIR fees on community pharmacists. Ronna Hauser, NCPA senior vice president of policy and pharmacy affairs, spoke at an HHS listening session to discuss the drug pricing report HHS prepared as a response to the Biden administration’s executive order on competition. She spoke at length on the need for the report to look at lowering out of pocket costs for patients through pharmacy DIR fee reform and realigning incentives in Part D. She also discussed the importance of banning spread pricing in Medicaid managed care, using NADAC + professional dispensing fee as a transparent pharmacy reimbursement metric in programs other than Medicaid, and the need for greater oversight of PBMs. Additionally, NCPA staff met with CMS in October to discuss the recent rule from the agency on pharmacy quality metric reporting for Part D plans, a regulatory scheme for medical-at-home pharmacy services, and contracting issues with PBMs affecting NCPA membership.

NCPA highlights concerns with DSCSA draft guidance: NCPA submitted comments to FDA in response to draft guidance presenting FDA’s views of what constitutes “enhanced drug distribution and security at the package level,” which will go into effect in 2023. NCPA’s comments highlighted a number of concerns with the draft guidance, including the need for dispenser flexibility when dealing with clerical errors, lack of clarity regarding the appropriate use of inference, and the infeasibility of a “system” where FDA and other government officials would be able to access, electronically and automatically, the confidential transaction data for all DSCSA-covered product purchases and sales held by supply chain partners.

NCPA urges DEA to work together on partial fills issue: NCPA submitted comments to the Drug Enforcement Administration on its proposed rule to implement partial filling of prescriptions for schedule II-controlled substances. The proposed rule would allow pharmacists to partially fill a C-II prescription if requested by the patient or prescriber and proposes to add requirements to ensure proper documentation of the partial fill on the prescription record.

NCPA successfully advocates for Biden administration to rescind changes to National Vaccine Injury Compensation Program: in April, HHS formally rescinded changes to the National Vaccine Injury Compensation Program which would have removed Shoulder Injury Related to Vaccine Administration and syncope from the injury table. NCPA advocated for the withdrawal of the changes throughout the process.

NCPA pushes FDA for clarity on fixed-quantity unit-of-use blister packaging: NCPA submitted comments to FDA on its notice to possibly require fixed-quantity unit-of-use blister packaging for certain immediate-release opioid analgesics under opioid analgesic Risk Evaluation and Mitigation Strategy. NCPA asked the FDA to carefully consider the implications on the LTC community, as many LTC pharmacists conduct their own unique packaging of medications to best serve their patients.

NCPA asks CMS to require PBMs to report detailed Part D quality measures: NCPA provided comments to CMS regarding new requirements for Part D plans to submit pharmacy performance measures to CMS, starting Jan. 1, 2022. NCPA builds upon this regulatory requirement to encourage CMS to maximize the reporting requirements of the plans/PBMs and provide as many specifics as possible on the measures used in determining pharmacy DIR fees.

NCPA wins on methylcobalamin in front of FDA Pharmacy Compounding Advisory Committee: NCPA submitted comments for the June Pharmacy Compounding Advisory Committee meeting in support of the addition of oxtriptan, melatonin, and methylcobalamin to the permitted to compound list. During the actual meeting, the committee agreed with the position of NCPA and against the position of the FDA on methylcobalamin. NCPA awaits the rule from the FDA on the additions to the bulk list.
HRSA announces new program for administering COVID-19 vaccines for underinsured:

In May, the Health Resources and Services Administration announced the COVID-19 Coverage Assistance Fund to cover the cost of administering COVID-19 vaccines to patients with health insurance, but whose insurance does not cover vaccination fees or covers them with cost-sharing. This program seeks to address the need for providers to be compensated for vaccinating underinsured patients and will reimburse providers at the increased national Medicare rate or patient costs for administration for those with some coverage.

COVID-19 PREP Act Declarations

Pharmacists, pharmacy technicians, and pharmacy interns authorized to order and administer COVID-19 therapeutics: The Ninth Amendment to the COVID-19 PREP Act Declaration extended PREP Act authorization and liability protections to pharmacists, pharmacy technicians, and pharmacy interns to order (pharmacists only) and administer COVID-19 therapeutics given orally, subcutaneously, or intramuscularly, including current and future medications that are approved, authorized, cleared, or licensed to treat or prevent COVID-19.

Pharmacy technicians and interns authorized to administer flu vaccines to adults: The Eighth Amendment to the COVID-19 PREP Act Declaration extended PREP Act authorization and liability protections to pharmacy technicians and interns to administer seasonal flu vaccines to adults.

Pharmacists and pharmacy interns with inactive, expired, or lapsed licensed authorized to administer COVID-19 vaccinations: The Seventh Amendment to the COVID-19 PREP Act Declaration extended PREP Act authorization and liability protections to pharmacists and pharmacy interns/student pharmacists who have licenses that are inactive, expired, or lapsed in the past five years to prescribe, dispense, and/or administer COVID-19 vaccines provided the licensee was in good standing before inactivity, expiration, or lapse.

COVID-19 ADVOCACY HIGHLIGHTS

Public Health Emergency extended: HHS Secretary Becerra has extended the PHE several times throughout the year to utilize flexibilities at both the state and federal level. The current expiration of the PHE is April 16, 2022.

Supreme Court blocks OSHA mandatory vaccination and testing requirement: The Supreme Court blocked implementation of a requirement imposed by the Office of Safety and Health Administration for employers with more than 100 employees, including pharmacies. Affected businesses would have been required to implement a mandatory COVID-19 vaccination policy or require weekly testing and use of face coverings.

NCPA secures increased reimbursements for COVID-19 vaccines: Originally, CMS was reimbursing pharmacists and other immunizers at a rate of $23 per dose. In March, CMS made the decision to increase the reimbursement to $40 per dose, matching some state reimbursement levels NCPA had secured.

NCPA joins stakeholders in criticizing decision on oral antivirals: NCPA along with other pharmacy groups criticized the decision by CMS to only “encourage” but not require payment to pharmacists for testing, patient assessment, ordering/prescribing and dispensing for oral COVID-19 antiviral drugs, potentially limiting the ability of Medicare patients to access these lifesaving medications.

Congress passes the American Rescue Plan:

After congressional passage, President Joe Biden signed the American Rescue Plan Act of 2021 on March 11, 2021. The $1.9 trillion package enacted many provisions that NCPA advocated for:

• additional funding for the Paycheck Protection Program and Economic Injury Disaster Loan grants,
• extension of the employee retention tax credit,
• extension of paid sick and paid family leave credits, and
• extension of the subsidy for costs incurred by employers that provide unemployment benefits on a reimbursable basis rather than through tax contributions.

HRSA announces new program for administering COVID-19 vaccines for underinsured: In May, the Health Resources and Services Administration announced the COVID-19 Coverage Assistance Fund to cover the cost of administering COVID-19 vaccines to patients with health insurance, but whose insurance does not cover vaccination fees or covers them with cost-sharing. This program seeks to address the need for providers to be compensated for vaccinating underinsured patients and will reimburse providers at the increased national Medicare rate or patient costs for administration for those with some coverage.
STATE ACTIONS

State government affairs

NCPA resource helps find state laws addressing PBM oversight: A new NCPA resource can help you determine how your state protects your pharmacy and patients from PBM abuse. The spreadsheet lists common PBM oversight provisions and lists states that have enacted such a provision, along with the statutory cite. The information includes laws addressing PBM oversight, provider networks, reimbursement issues, and conflicts of interest.

NCPA government affairs assisted in the states: Our state government affairs team provided input to 34 states, including draft legislative language, bill review, letters of support/opposition and in-person testimony. The states we worked with this year were: Alabama, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

NCPA creates one-pager dispelling PBM regulation myths: To counter the PBM lobby’s assertions that PBM oversight raises patient costs, NCPA created a one-pager showing that health premium increases have risen more significantly in states that do not license PBMs compared to states that require licensure (see chart below).

The following legislative measures were passed in the states in 2021:

PBM REFORM
Alabama SB 227: Prohibits a PBM from steering a patient to its affiliated pharmacies and from reimbursing its affiliated pharmacies at higher rates than non-affiliated pharmacies; requires a PBM to contract with a pharmacy that is willing to meet the terms and conditions for network participation.
Arizona SB 1356: Prohibits a PBM from holding a pharmacy responsible for a fee for any step, component, or mechanism related to the claims adjudication process.
Arkansas HB 1804: Makes changes to align existing law with the Rutledge v. PCMA decision; gives the Insurance Department enforcement authority over existing fair pharmacy audit laws.
Arkansas HB 1881: Prohibits a PBM from mandating that a patient uses a mail-order pharmacy or otherwise interfering with the patient’s right to choose an in-network pharmacy.
Arkansas HB 1852: Prohibits a pharmacy that is owned by an insurer/PBM or other similar entity from requiring a patient to receive prescriptions through home-delivery services.
Arkansas SB 617: Prohibits a pharmacy that is owned by an insurer/PBM or other similar entity from filling a prescription without express patient consent; requires the affiliated pharmacy to disclose the conflict of interest; prohibits an affiliated pharmacy from using patient data for solicitation purposes.
Colorado HB 21-1237: Directs the state to enter into a contract with a PBM for the administration of state employee health insurance through a reverse-auction process, and then use that platform to audit claims.

INCREASE IN HEALTH INSURANCE PREMIUM COSTS BY PERCENTAGE (2015-2019)†

1. Numbers based on data from the Kaiser Family Foundation (www.kff.org).
Maine LD 1450: Prohibits a PBM from using untrue, deceptive, or misleading advertising.
Maine LD 686: Requires PBMs and other drug supply chain entities to disclose certain drug pricing information to the state.
Maryland HB 601: Removes provisions exempting ERISA plans from regulations addressing the provision of pharmacy benefits.
Montana SB 395: Requires PBMs to become licensed with the state; prohibits a PBM from using untrue, deceptive, or misleading advertising; requires a PBM to offer adequate pharmacy provider networks.
New Hampshire SB 97: Protects a pharmacy’s authority to offer home delivery services from PBM interference.
New Mexico SB 124: Requires a health plan to reimburse a pharmacy within 14 days of receiving the claim.
North Dakota HB 1492: Prohibits a PBM from holding a pharmacy responsible for a fee for any step, component, or mechanism related to the claims adjudication processing network.
Oklahoma HB 2123: Establishes the Pharmacy Choice Commission to assist with the enforcement of PBM regulations.
Oklahoma HB 2677: Strengthens existing fair pharmacy audit protections and MAC list appeal procedures; permits a pharmacy to refuse to dispense a prescription if the reimbursement would be lower than the pharmacy’s cost of acquiring the drug.
Rhode Island SB 479: Prohibits a PBM from implementing gag clauses that prevent pharmacists from discussing a patient’s cost-share or lower-cost alternatives.
Tennessee HB 1398: Prohibits a PBM from interfering with a patient’s right to choose an in-network pharmacy provider through steering, coercive copays, or other means; requires PBM reimbursement rates to reflect a pharmacy’s actual acquisition costs.
Texas HB 1763: Prohibits a PBM from retroactively reducing claim amounts through effective rates, quality assurance programs, or other means; prohibits a PBM from reimbursing its affiliated pharmacies at higher rates than non-affiliated pharmacies; protects a pharmacy’s right to offer home-delivery services; prohibits a PBM from requiring accreditation requirements that are more stringent than those required by the state or federal government; protects a pharmacy from PBM retaliation for exercising its rights under the bill.
Texas HB 1919: Prohibits a PBM/insurer or its affiliate from transferring patient data for a commercial purpose; prohibits a PBM/insurer from steering patients to, or requiring a patient to use, an affiliated pharmacy.
Utah SB 177: Strengthens existing fair pharmacy audit laws.
Virginia HB 2219: Makes existing patient choice and “any willing pharmacy” provisions applicable to PBMs, instead of just insurers.
West Virginia HB 2263: Requires a PBM to reimburse a claim in an amount that is not less than the drug’s NADAC plus a professional dispensing fee of $10.49; prohibits PBMs from charging a pharmacy a retroactive fee or from deriving revenue from a pharmacy or an insured; prohibits a PBM from reimbursing non-affiliated pharmacies at lower rates than it reimburses its affiliated pharmacies; prohibits a PBM from interfering with a patient’s right to choose an in-network pharmacy and from denying a pharmacy the opportunity to become an in-network provider, if the pharmacy is willing to agree to the network’s terms and conditions; removes a provision exempting PBMs serving ERISA plans from existing regulations.
Wisconsin SB 3: Requires PBMs to become licensed with the state; prohibits a PBM from implementing a gag clause; requires a PBM to provide notice of accreditation requirements for network participation; establishes fair pharmacy audit procedures.

STATE PROVIDER STATUS
Arkansas HB 1134: Allows pharmacists to prescribe, administer, deliver, distribute, or dispense vaccines and medications to treat adverse reactions to administered vaccines to individuals 3 years old and up.
California AB 133: Requires the Department of Health Care Services to implement a medication therapy management benefit and reimbursement methodology for covered pharmacist services related to the dispensing of qualified specialty drugs.
California AB 1064: Authorizes pharmacists to initiate and administer immunizations to include any vaccine approved or authorized by the FDA for persons 3 years of age and older.
Colorado HB 21-1275: Modifies Colorado’s Medicaid program to include payments to pharmacists when working in a collaborative practice agreement with a physician and allows clinical pharmacists services to be reimbursed at federally qualified health centers.
Florida SB 768: Authorizes certified pharmacists to administer vaccines to adults and to administer influenza vaccines to children 7 years of age or older.
Illinois SB 2017: Allows pharmacists to administer all vaccines recommended on CDC schedules and travel vaccines for those 7 and older; requires reimbursement at the physician rate.
Iowa SB 296: Allows pharmacists to engage in collaborative pharmacy practice and makes them eligible to receive payment or reimbursement under a health benefits plan.
Kentucky HB 48: Requires insurers to reimburse a pharmacist for a service or procedure at a rate no less than that provided to other nonphysician practitioners.
Maryland SB 736: Authorizes pharmacists to administer FDA approved vaccines to individuals 3-17 years old from July 1, 2021, until June 30, 2022.
New York SB 4807: Authorizes pharmacists to provide specific vaccinations such as measles, mumps, and the COVID-19 vaccine for individuals over the age of 18
Ohio HB 6: Authorizes pharmacists to administer any vaccine to individuals 13 and older and both influenza and COVID-19 vaccines to individuals 7-13 years old without a prescription.
Oklahoma SB 392: Requires an insurer to compensate pharmacists for services provided to enrollees.
Oklahoma SB 398: Authorizes pharmacists to administer any FDA approved or authorized vaccine without a prescription.
Oregon HB 2958: Requires insurance plans with prescription drug benefits to cover the cost of drugs prescribed and dispensed for preexposure and post-exposure prophylactic antiretroviral therapies.
Virginia HB 2333 and SB 1445: Per established process by the department of health, eligible health care providers can volunteer to administer the COVID-19 vaccine to residents of the commonwealth during a state of emergency related to the COVID-19 pandemic. Allows pharmasists to volunteer their facilities as COVID-19 vaccination sites.
Wisconsin AB 4: Allows certified pharmacy technicians to administer vaccines and pharmacy students to administer vaccines under the supervision of a pharmacist or provider who is already authorized.
Wisconsin SB 255: Requires the state Department of Health Services to provide reimbursement under the Medicaid program to services provided by a licensed pharmacist.

STATE LEGISLATIVE TESTIMONY

NCPA to New York lawmakers — Finish What You Started: In a letter to then-New York Gov. Andrew Cuomo (D) and Senate and Assembly leadership, NCPA urged New York to move ahead with implementation of its Medicaid pharmacy benefit carve-out, saying: “finish what was started last year and fully implement the carve-out without delay.” New York was supposed to move the Medicaid pharmacy benefit back into Medicaid fee for service on April 1, 2021, but the implementation date has been delayed for two years.

NCPA submits comments supporting Washington PBM reforms: NCPA submitted comments supporting two bills in Washington state: SB 5075 and SB 5076. The bills would protect patient choice by requiring PBMs to contract with any pharmacy willing to meet its terms and conditions for network participation, allow patients to use the in-network pharmacy of their choice, and inform patients about their right to refuse to use mail-order pharmacy. The bills are pending in the legislature.

NCPA supports comprehensive PBM licensure bill in Michigan: NCPA supports and worked with Michigan legislative staff to introduce HB 4548, a PBM licensure bill that addresses reimbursement, network adequacy, and other PBM issues. This legislation would prohibit PBMs from reimbursing non-affiliate pharmacies less than affiliate pharmacies; prohibit patient steering to PBM-owned pharmacies; prohibit retroactive clawbacks; require reimbursements for commercial plan claims to be based on the National Average Drug Acquisition Cost; and establish fair audit procedures for community pharmacies. NCPA was proud to submit a letter of support for this important legislation and offer digital grassroots support. The bill is pending in the legislature.

NCPA submits written testimony supporting Minnesota PBM reform bill: NCPA submitted written testimony to the Minnesota state legislature supporting SF 917, which would require PBM reimbursement transparency and control PBM conflicts of interest. NCPA’s comments focused on the impact that opaque PBM practices have had on patient access to community pharmacy services in Minnesota, which has lost half of its independent pharmacies in the past 10 years. The bill is pending in the legislature.

NCPA letter urging New York to implement its Medicaid pharmacy benefit carve-out.
NCPA joins effort to oppose Washington state estate tax increase: NCPA joined 37 other organizations to oppose efforts to double the top estate tax rate in the state of Washington. In a letter to Rep. Tina Orwall (D), the organizations noted that the proposed increase will make it harder for family owned and operated businesses, farms, and ranches to pass to the next generation of ownership. The bill is pending in the legislature.

NCPA submits letter of support for Hawaii legislation: NCPA submitted a letter of support for SB 975, which would establish fair pharmacy audit requirements. The bill is pending in the legislature.

NCPA testifies in support of Maine PBM reform legislation: NCPA testified virtually in support of Maine LD 1450, which would prohibit PBMs from distributing misleading patient advertising materials. The bill was signed into law.

Florida Pharmacy Association and NCPA call for Medicaid reforms to hold PBMs accountable: In a joint op-ed on the Florida Politics website, Florida Pharmacy Association CEO Michael Jackson and NCPA CEO Douglas Hoey urged policymakers to rein in PBM abuses in the state’s Medicaid managed care system that are costing the state nearly $113 million. Specifically, they stated, “it’s time for the legislature and Gov. Ron DeSantis to hold PBMs accountable by advancing SB 1306, HB 1043, or other legislation to put an end to shady profiteering practices that distort the market and harm patients as well as the local pharmacists who care for them.”

NCPA submits testimony in support of California anti-steering bill: NCPA submitted written testimony and provided virtual support for California SB 524, which would prohibit a PBM from distributing patient communications that can mislead patients into believing they must utilize a particular pharmacy, particularly a PBM-owned pharmacy. NCPA pointed out in its comments that such communications can thwart a patient’s ability to make health care decisions for themselves. The bill passed the legislature, but Gov. Gavin Newsom (D) vetoed the bill.

NCPA testifies in support of Illinois PBM bill: NCPA testified and submitted a letter of support for Illinois SB 2008, which would address PBM reimbursement issues, conflicts of interests, and opaque practices that raise costs for patients. NCPA’s comments pointed out that PBM practices have led to the closure of 23 percent of Illinois’ community pharmacies over the past decade, which has severe negative impacts on patient health. The bill is pending in the legislature.

NCPA submits letter of support for Indiana legislation: NCPA submitted a letter of support for Indiana SB 143, which would authorize an audit of the state’s Medicaid prescription drug benefit. NCPA’s comments highlighted the need for a comprehensive audit to identify all the ways PBMs are pocketing tax dollars without benefiting Indiana beneficiaries or taxpayers. The bill failed to pass.

NCPA supports expanded access to pharmacist-administered vaccines in Texas: NCPA joined other pharmacy and patient advocacy organizations in supporting TX HB678, which would allow pharmacists to independently order and administer all vaccines to patients 3 years of age and older. The bill passed the House of Representatives but failed to make it out of the Senate.
NCPA submits letter of support for Delaware PBM bill: NCPA submitted a letter of support for Delaware HB 219, which would protect patients and community pharmacies from PBM conflicts of interest. The bill was enacted.

NCPA testifies in support of PBM reform in Wyoming: NCPA’s Matthew Magner testified in front of the Wyoming Joint Labor, Health and Social Services Committee in support of draft PBM legislation. In his virtual testimony, Magner expressed the need to address PBM conflicts of interest, which allow PBMs to steer patients to their own pharmacies and create anticompetitive reimbursement methods. The legislature will consider formally introduced legislation next year.

NCPA asks Maine to reconsider insulin access bill: In a letter to Maine legislators, NCPA expressed concerns over LD 673, which would create an insulin safety net program. NCPA pointed out that the program is duplicative of existing programs and would serve only to create government bureaucracy for patients and pharmacies with no added benefit. The bill was ultimately enacted.

Patient steering and spread pricing bill in Massachusetts: NCPA submitted comments to the Massachusetts Joint Committee on Financial Services in support of S684, which would limit PBM patient steering and spread pricing. The bill is pending in the legislature.

NCPA provides testimony on patient steering: NCPA provided virtual testimony before an Oklahoma House interim study committee studying SB 821, a bill that addressed PBM abuses including patient steering. SB 821 was passed by the legislature earlier this year, but Gov. Kevin Stitt (R) vetoed it. NCPA provided information related to patient steering nationwide, including data from states finding that PBMs steer patients to their own pharmacies and reimburse those pharmacies at higher rates than independent pharmacies.

STATE REGULATORY COMMENTS

NCPA opposes potential California Board of Pharmacy ban on 503A pharmacies compounding Methylcobalamin: In coordination with the California Pharmacists Association, NCPA submitted comments to the California Board of Pharmacy emphasizing the need to maintain appropriate patient-specific compounded Methylcobalamin medications through 503A pharmacies licensed in the state. The board expressed its desire to ensure safety through cGMP requirements via 503B pharmacies, but upon pushback from patients, physicians, and pharmacists, the board will not be taking any action at this time.

NCPA scores victory on compounding MOU: NCPA, along with pharmacy partners, sent a letter to the individual state boards of pharmacy encouraging them to act on the FDA Memorandum of Understanding on interstate shipments of compounded drugs. The groups encourage the state boards to contact the FDA and request a delay of enforcement for two years to ensure adequate time to enact changes. The FDA published a notice that extended the period to sign from October 2021 to October 2022, giving states and boards of pharmacy additional time to consider the MOU and make necessary changes to existing state law for compliance.

NCPA, others ask Kansas Medicaid to increase COVID-19 vaccine reimbursement rate: In a letter to Kansas Medicaid director, NCPA, and pharmacy partners requested an increase in reimbursement rate for COVID-19 vaccines. The rate was $14.15. The community pharmacy coalition emphasized that an adequate reimbursement rate is not only necessary to cover pharmacy costs to administer the vaccines but also maximize access to all Kansans. Kansas Medicaid submitted a state plan amendment to increase the rates of payment for COVID-19 vaccines, which was approved by CMS.

NCPA comments on West Virginia proposed rules implementing PBM bill: NCPA provided comments to the West Virginia Offices of the Insurance Commissioner in response to proposed rules implementing enacted PBM legislation. Among other provisions, the legislation requires PBMs to reimburse pharmacies at rates that are no lower than NADAC plus a professional dispensing fee of $10.49. In its comments, NCPA asked the state to ensure PBMs do not skirt the law by creating additional “transaction fees” and to enforce the law to the full extent allowed under the Rutledge v. PCMA decision. The regulations have not been finalized as they must be approved by a legislative rule-making review committee which will likely take place early in the 2022 legislative session.
NCPA provides comments to the Virginia Board of Pharmacy:
NCPA submitted written comments to the Virginia Board of Pharmacy regarding proposed amendments expanding the definition of unprofessional conduct. The proposed amendments came after documented reports of concerning public and patient safety at retail pharmacies in Virginia. The amendments encourage working conditions that prevent fatigue among pharmacy personnel. John Beckner, senior director of strategic initiatives at NCPA, provided verbal comments at the meeting applauding the board’s attention to this issue in highlighting workplace safety and its benefits to pharmacy patients in providing care. After a narrow vote on the amendments within the board’s committee, NCPA sent a second letter urging the amendments to be made available for a 30-day comment period. The full Board of Pharmacy voted to make the comments available and will create a workgroup to study labor issues within pharmacy.

STATE STUDIES/FINDINGS REGARDING PBM PRACTICES

NCPA helps Pa. county controller find money Wasted on PBMs: Over the past year, NCPA has provided information to Lehigh County Controller Mark Pinsley pertaining to his audit of the county employees’ prescription drug benefit. In his final audit, he determined proper oversight of its PBM, Express Scripts, could lead to potential savings of $1.4 million for the county. In discussions with NCPA, Controller Pinsley also expressed concerns that ESI was steering patients out of-state pharmacies, thus sending money out of the county and away from local, independent pharmacies.

Arkansas investigates PBM use of state funds: Pursuant to a request for information into the regulation of PBMs and state funds going to PBMs, the Arkansas Department of Insurance issued a report finding that PBMs are not in full compliance with state law, and that PBM drug formulary practices can create conflicts of interest.

Delaware investigates PBM administering state employee benefits: The Delaware State Auditor issued a report finding that the State Benefits Office cost taxpayers millions after paying its PBM $24.5 million more than it should have paid for state employees’ prescription drugs.

North Dakota shows savings by carving certain Medicaid beneficiaries out of Medicaid managed care: In testimony on the state’s Medical Services budget, North Dakota Medical Services staff released their findings that carving pharmacy benefits out of the managed care program for Medicaid expansion and the Children’s Health Insurance Program saved the state $17.259 million, exceeding the projected savings of $6.091 million.
ENGAGEMENT

Grassroots engagement

NCPA hosted a successful virtual Congressional Pharmacy Fly-In: More than 300 community pharmacists from 47 states held virtual meetings with more than 250 congressional offices. Participants used the opportunity to tout community pharmacy’s contributions to the fight against the coronavirus and to push for much-needed full DIR reform.

NCPA members hosted elected officials for pharmacy visits: In 2021, there were more opportunities for in-person pharmacy visits and in-district meetings with legislators or staff than in 2020, though a few were held virtually. Elected officials, or their staff, participating in such meetings included Govs. Roy Cooper (D-N.C.), Kevin Stitt (R-Okla.) and Tom Wolf (D-Pa.); Sens. Robert Casey (D-Pa.), Joni Ernst (R-Iowa), Chuck Grassley (R-Iowa), Amy Klobuchar (D-Minn.) and Ron Wyden (D-Ore.); and Reps. Cliff Bentz (R-Ohio), Michael Burgess (R-Texas), G.K. Butterfield (D-N.C.), Tom Cole (R-Okla.), Henry Cuellar (D-Texas), Ron Estes (R-Kan.), Michelle Fischbach (R-Minn.), Jim Jordan (R-Ohio), David Joyce (R-Ohio), Fred Keller (R-Pa.), David Kustoff (R-Tenn.), Darin LaHood (R-III.), Elaine Luria (D-Va.), Cathy McMorris Rodgers (R-Wash.), Kurt Schrader (D-Ore.) and Claudia Tenney (R-N.Y.)

NCPA members urge FTC to examine PBM trade practices: Pharmacists and independent pharmacy advocates submitted 3,076 comments to an FTC docket requesting examples of unfair trade practices.

NCPA Runs ads in Washington Post and Politico: In September, NCPA launched a three-day ad blitz aimed at pushing Congress to end the shady practices of giant corporate middlemen who pocket savings intended for senior citizens and drive local pharmacies out of business. The ad, You Should Know, shows PBMs negotiate discounts on expensive pharmaceuticals and keep a chunk of the savings instead of passing it on to consumers. The ad appeared in The Washington Post and Politico.

NCPA “Melts the Phones” for DIR reform: In December, NCPA launched an aggressive grassroots effort to Melt the Phones on Capitol Hill to demand an end to pharmacy DIR fees in the Build Back Better Act. Working with industry stakeholders to promote the campaign, more than 2,000 pharmacists made nearly 3,000 connections with Senate offices through phone calls, emails, and tweets. The effort resulted in contacts with Senate offices in 48 states. Additionally, more than 250 patients made over 350 connections in support of ending pharmacy DIR fees through the Fight4Rx platform and complemented a targeted paid patient phone effort to contact key Democratic leadership and Finance Committee members that resulted in an additional 2,800 patient calls urging support.
NCPA members demand action on pharmacy DIR fees: Pharmacists submitted 5,482 emails in support of H.R. 3554/S. 1909 the Pharmacy DIR Reform to Reduce Senior Drug Costs Act since the bills were introduced. An additional 1,833 messages were sent to Democratic members of Congress urging pharmacy DIR reform to be included in the reconciliation package.

NCPA partnered with the American Economic Liberties Project on various meetings and events with key officials in the Biden administration, FTC and on Capitol Hill to highlight the need for robust antitrust enforcement in the pharmacy space to level the playing field for independent pharmacy against the PBMs.

NCPA worked with the Institute for Local Self Reliance on various opportunities to promote FTC and elected official engagement over unfair trade practices impacting Main Street businesses.

NCPA’s Truth Campaign recruits over 15,000 patient advocates for Fight4Rx: NCPA ran a multi-faceted grassroots campaign in 18 states to counter misinformation spread by the PBM lobby. The campaign resulted in the recruitment of over 15,000 patient advocates who have since been activated on other pro-patient pharmacy priorities.

External stakeholder engagement

Pharmacy and patient stakeholders demand action on pharmacy DIR fees: NCPA worked with industry allies to coordinate a sign-on letter in support of pharmacy DIR reform legislation. The letter was signed by 250 organizations, the most signatories on a DIR letter thus far.

NCPA launched the Coalition for PBM Reform along with the AIDS Healthcare Foundation, Coalition of State Rheumatology Organizations, Community Oncology Alliance, FMI - The Food Industry Association, and the National Federation of Independent Business.

NCPA staff continued to attend key events and/or present to outside stakeholders, including the following:

- AmerisourceBergen ThoughtSpot
- American Medical Association CPT Panel
- American Society for Automation in Pharmacy
- American Society of Consultant Pharmacists
- American Society for Pharmacy Law
- Cardinal Health RBC
- Coalition of State Rheumatology Organizations
- Connecticut Pharmacists Association
- Epic Rx
- Florida Pharmacy Association
- Food and Drug Administration Pharmacy Compounding Advisory Committee
- FDA/Duke-Margolis Workshop
- Gerimed
- Healthcare Distribution Alliance Traceability Webinar Series
- Iowa Pharmacy Association
- National Alliance of State Pharmacy Associations
- National Association of Boards of Pharmacy
- National Association of Insurance Commissioners
- National Council for Prescription Drug Programs
- National Pharmacy Technician Association
- New Jersey Pharmacists Association
- Northeast Pharmacy Services Corporation
- Omnicell
- Partnership for DSCSA Governance
- PCCA
- Pharmacy Quality Alliance
- Redscale
- Tennessee Pharmacists Association
- Virginia Pharmacists Association
IN THE COURTS

Legal

NCPA advocates for the FTC to enforce competition laws against PBMs for their anticompetitive activities: NCPA has spoken to top Federal Trade Commission officials on several occasions to educate the FTC on the anticompetitive behavior of PBMs. NCPA also has provided comments and a letter to the chair of the FTC, Lina Khan, regarding the most concerning practices of PBMs, including patient steering into PBM affiliated pharmacies, adhesion contracts that are forced on community pharmacies, and discriminatory reimbursement practices. NCPA will continue to advocate for the FTC to take enforcement action against the most problematic PBM practices.

NCPA meets with Department of Justice on UnitedHealth Group’s proposed acquisition of Change Healthcare: NCPA met with DOJ officials to lodge an objection to the proposed acquisition of Change Healthcare by UHG. NCPA explained the impact this merger would have on an independent pharmacy, and how data from Change Healthcare’s “switch” could provide competitive insight into UHG’s competitors, which include independent pharmacies.

NCPA files friend of the court brief in Louisiana Independent Pharmacies Association v. Express Scripts, Inc.: LIPA filed this lawsuit in the United States District Court for the Western District of Louisiana alleging ESI is failing to reimburse independent pharmacies that are required to collect a mandatory state fee. Under state law, if the PBM does not reimburse the fee, the pharmacy must continue to pay and absorb the cost or risk falling out of compliance. NCPA filed an amicus brief arguing to the 5th Circuit Court that there is no Medicare Part D preemption, and that ESI should be obligated to reimburse the fee in accordance with the law.

Judge sends approval of Washington State Medicaid reimbursement plan back to CMS: Notwithstanding a previous ruling that a Washington State Plan Amendment that permitted below-cost pharmacy reimbursement violated Medicaid rules, it received approval from CMS to go into effect in January 2021. NCPA, NACDS, and the Washington State Pharmacy Association immediately filed a suit to challenge the approval due to the state’s failure to conduct a cost of dispense study or use other reliable data to create a reimbursement rate. A judge sent the state plan amendment back to CMS for reconsideration. The CMS administrator is working on a revision to its decision and anticipates the agency will address the below-cost reimbursement issue.

8th Circuit issues win in PCMA v. Wehbi

In November, the 8th Circuit upheld two North Dakota laws that permit the state to regulate PBMs. The 8th Circuit had previously held that the state laws were preempted by ERISA and Medicare Part D but reconsidered its decision after the Supreme Court ruled in PCMA v. Rutledge that state regulation of PBMs is not preempted by ERISA. The ruling permits the state laws to go into effect (with a few Medicare Part D exceptions) and will enable the state to push back on the abusive practices of PBMs. This is the first circuit decision to test the scope of the Rutledge decision and is great news for the future regulation of PBMs.
NCPA meets with the White House Competition Council:
NCPA’s current president, Michele Belcher, and immediate past president, Brian Caswell, each presented to the council and expressed concerns about the anticompetitive behavior of PBMs. NCPA encouraged the council to coordinate efforts between agencies to rein in PBMs and address the negative consequences associated with vertical consolidation in the health care sector.

NCPA President Michele Belcher talks PBM reform with White House. Belcher spoke about the harm PBMs have done to locally owned pharmacies through one-sided contracts, patients being steered to PBM affiliated pharmacies, opaque financial clawbacks, and discriminatory reimbursement.

NCPA sues to stop retroactive pharmacy DIR fees: NCPA is actively pursuing a lawsuit against the government challenging the rule that allows for retroactive pharmacy direct and indirect remuneration fees. Providing transparency into DIR fees has been our top priority since 2014. Attempts to persuade the Department of Health and Human Services to adopt new rules to remedy the problem stalled due to opposition from previous administrations. Finally, after exhausting every effort to work through the legislative and regulatory processes, NCPA filed a suit against the government in January 2021. NCPA was later joined in this effort by the American Pharmacists Association, the Coalition of State Rheumatology Organizations, Fruth Pharmacy, Hi-School Pharmacy Services, Kare Drug, and Tyson Drug Co. In early 2022, the Centers for Medicare & Medicaid Services promulgated a new proposed rule that could change a key definition addressing DIR fees. Should CMS ultimately adopt the proposed rule, we believe it would moot our claim in this case. As a result, we sought, and the court granted, a stay (a pause) of this litigation until the proposed rule is either rejected or adopted. Should the proposed rule not be adopted, or be adopted with a definition that does not adequately address DIR fees, NCPA will consider whether to reinstitute this litigation at that time.
**The NCPA Legislative/Legal Defense Fund**

The 2020 unanimous 8-0 Supreme Court ruling in Rutledge v. PCMA reaffirmed a state’s right to regulate PBMs. In 2021 NCPA helped to further solidify that right when the 8th Circuit Court of Appeals reaffirmed North Dakota could regulate PBMs in PCMA v. Wehbi. NCPA has also continued advocating for various pieces of federal and state level legislation and helping to push forward legal arguments in cases such as NCPA v. Becerra. These crucial avenues for progress for community pharmacy were underwritten by hundreds of contributors to the Legislative/Legal Defense Fund. The LDF supports NCPA’s entire advocacy operation: research, lobbyists, attorneys, communications, the whole ball of wax. The better funded the LDF, the more resources and influence we can put toward getting our priority legislation passed and friendly regulations adopted and defending pharmacy practice in key litigation.

**Major investors in the LDF for calendar year 2021 included the following. To become one of them, visit www.ncpa.org/ldf and invest.**

**LDF PLATINUM**
($200,000 or more in corporate funds annually)
- AmerisourceBergen Corporation
- Cardinal Health
- Compliant Pharmacy Alliance Cooperative

**LDF GOLD**
($100,000 or more in corporate funds annually)
- GeriMed, Inc.

**LDF SILVER**
($50,000 or more in corporate funds annually)
- American Pharmacy Cooperative Inc.
- Independent Pharmacy Cooperative
- McKesson Corporation
- PCCA
- RxSafe, LLC

**LDF BRONZE**
($5,000 or more in corporate funds annually)
- American Associated Pharmacies
- American Pharmacies
- American Pharmacy Services Corp.
- Datarithm
- Garden State Pharmacy Owners Inc.
- Georgia Pharmacy Association/AIP Georgia
- Innovatix LLC
- Kentucky Independent Pharmacist Alliance
- Kinney Drugs Inc.
- Lewis Drugs, Inc.
- Liberty Software
- Managed Health Care Associates, Inc.
- Mississippi Independent Pharmacies Association
- ND Pharmacy Service Corporation
- Pharmacy First
- Pharmacy Providers of Oklahoma (PPOk)
- Philadelphia Association of Retail Druggists
- Sav-Mor
- Thrifty White Pharmacy
- Value Drug Company

**LDF MVP**
($5,000 or more annually)
- Jay Blackburn
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- Anne Hutchens
- Bob Mabe
- Nicole McNamee
- Michael Minesinger
- Mark Newberry
- Raymon Reynolds
- Sara Shelley
- John Tilley
- Gary Wientjes

**In 2021 NCPA’s LDF funded the following major initiatives:**
- Anti-PBM TV ads in Washington, DC metro area
- NCPA v. Becerra
- NCPA’s involvement in PCMA v. Wehbi
- The Truth Campaign
- The Melt the Phones Campaign
- Advertisements in *The Washington Post*
The NCPA Political Action Committee

The NCPA PAC supports candidates who think as you do, who understand the challenges of running a business and squeezing every nickel, so you can serve your patients well. Supporting those candidates means funding campaigns and that’s what the NCPA PAC does. To be effective requires a strong, well-funded PAC. Your personal investment in the NCPA PAC means it will have enough money to help fund congressional campaigns and build NCPA influence. Pro-pharmacy elected officials will be much more willing to consider the evidence we present concerning PBM abuses – and do something about it.

PAC Highlights

• **NCPA PAC participated in over 100 events:** Through the support of NCPA members, NCPA PAC representatives participated in over 100 in-person and virtual political events in Washington, D.C., and across the country.

• **NCPA PAC volunteers raised over $50,000 for NCPA PAC:** The 2021 NCPA PAC telethon was a success, raising over $50,000 in funds and pledges that will be used to elect pro-pharmacy candidates. Pharmacy owners from all over the nation volunteered their time to help make NCPA PAC’s efforts a success. Special thanks to the members who participated: Mayank Amin, Schwenksville, Pa
NCPA President Michele Belcher, Grants Pass, Ore.
Danny Cottrell, Brewton, Ala.
NCPA PAC Chairman Steve Giroux, Middleport, N.Y.
Jay Graessle, Asheville, N.C.
Carter High, Rhome, Texas
Ben Jolley, Salt Lake City, Utah
Nasir Mahmood, White Plains, N.Y.
Ashley Seyfarth, Bloomfield, N.M.
Ken Thai, San Marino, Calif.
Justin Wilson, Midwest City, Okla.
Hashim Zaibak, Milwaukee

The following donors are major investors in the NCPA PAC for calendar year 2021. To learn more about the PAC and invest, visit ncpa.org/ncpa-pac.

**PAC MVP INVESTORS**
($5,000 in personal funds annually)
Michele Belcher
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Jeff Bray
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Hugh Chancy
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Boyd Ennis
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Robert Greenwood
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B. Douglas Hoey
Edmund Horton
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Bill Osborn
Cole Sandlin
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Danny Dang
John Gross
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William Moore
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Justin Wilson
THE NCPA ADVOCACY CENTER
As The Voice of the Community Pharmacist®, NCPA harnesses the power of thousands of community pharmacists to advocate for you and the patients you serve. From the State House to the White House, and from Congress to the courts, NCPA’s Advocacy Center has got your back.

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• State-level PBM oversight and regulation
• Testimony and letters of support/opposition
• Medicaid fee-for-service and managed care

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• Legislative and regulatory issue tracking at federal level
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• Small business (taxes)

THE NCPA ADVOCACY CENTER
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Support NCPA’s Advocacy Efforts By:
- Taking grassroots action through NCPA’s Legislative Action Center (ncpa.org/legislative-action-center)
- Supporting the NCPA PAC (ncpa.org/pac)
- Contributing to the NCPA LDF (ncpa.org/ldf)