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The *voice* of the
community
pharmacist.

Law and Advocacy Update 2023 – The Issues Impacting Your Business

Cardinal RBC 2023

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Disclosure

There are no relevant financial relationships with ACPE defined commercial interests for anyone who was in control of the content of the activity.



WCCO's 2017 Christmas Drive Dinner meets with newly elected Rep. Nick Larson (D-Minn.)

NCPA Federal Legislative Advocacy

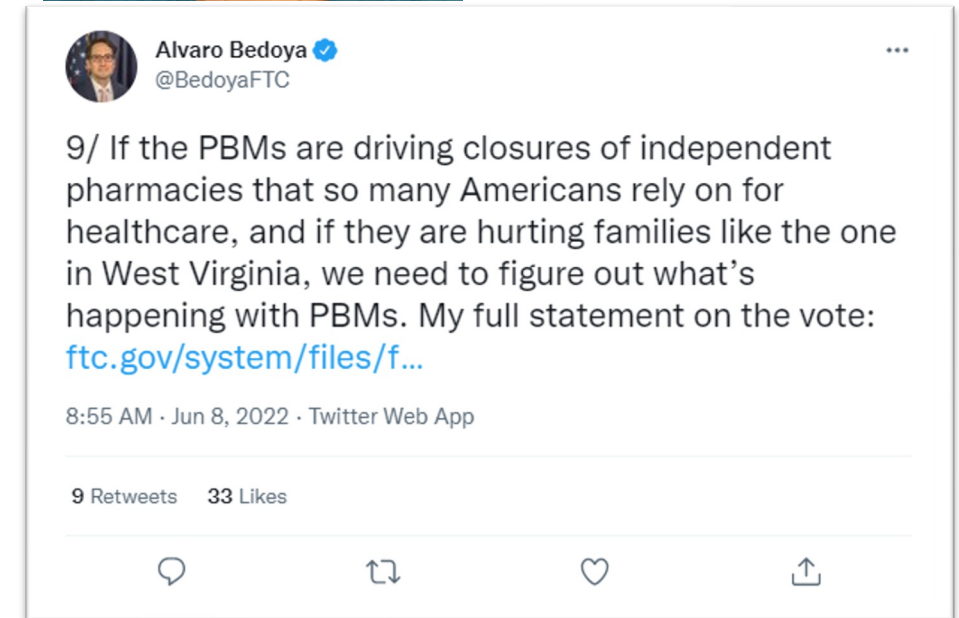


FTC Taking Action, Finally!

- ✓ June 8, 2022: FTC adopts (6)(b) study, vote 5-0!
 - ✓ Scrutinizing PBMs business practices
 - ✓ Examining the impact of PBM practices
 - ✓ FTC sending compulsory orders
 - ✓ Move came after more than 24,000 public comments were submitted in response to the FTC's request for information
 - ✓ **Update: Expanded study to include GPOs and rebate aggregators**
- ✓ Chairwoman Lina Khan spoke at NCPA Annual Convention



FTC Chairwoman
Lina Khan





Congressional Focus on PBMs

- **May 23rd:** Chairman James Comer (R-KY), [House Oversight and Accountability Committee](#), held a hearing investigating PBM practices-NCPA Member Kevin Duane testified House
- **May 17th:** [House Ways and Means Health Subcommittee](#) held a hearing on PBM practices - NCPA member Joe Moose testified
- Senate Judiciary, Senate Commerce, Senate HELP, House Energy and Commerce, and House Education and Workforce committees have already marked-up PBM legislation
- Senate Finance held a hearing on PBMs
- House Energy and Commerce held a hearing on Price Transparency with a focus on PBMs
- HHS Secretary Becerra asked about PBMs in numerous budget hearings



Rep. James Comer (R-Ky.)



NCPA Members Testify



Ways & Means Committee



Oversight & Accountability



NCPA's Congressional PBM Reform Priorities



H.R. 1613 / S. 1038, *the Drug Price Transparency in Medicaid Act*

- Included in H.R. 3561, *the Promoting Access to Treatments and Increasing Extremely Needed Transparency (PATIENT) Act*



S. 127, *the Pharmacy Benefit Manager Transparency Act*



H.R. 2880, *the Protecting Patients Against PBM Abuses Act*



S. 2052, *the Protect Patient Access to Pharmacies Act*



Medicaid Managed Care Reform

H.R. 1613/S. 1038, the *Drug Price Transparency in Medicaid Act of 2023*

- Sponsored By Reps. Carter (R-GA) and Gonzalez (D-TX) in House and Sens. Welch (D-VT) and Marshall (R-KS) in Senate
 - Additional House leads: Reps. Rick Allen (R-GA), Jake Auchincloss (D-MA), Elise Stefanik (R-NY), and Deborah Ross (D-NC.)
- It would bring transparency to the Medicaid program by:
 - Federal “fix”
 - Prohibits spread pricing
 - “Pass-through” model
 - NADAC & dispensing fee
 - PBMs would be paid an administrative fee

CBO has estimated over \$1 billion in savings over 10 years



Rep. Buddy Carter



Rep. Vincente Gonzalez



Sen. Peter Welch



Sen. Roger Marshall



The PATIENT Act (H.R. 3561)

Includes provisions vital to lowering prescription drug costs and bringing transparency to anticompetitive practices of PBMs, including H.R. 1613

Passed committee in a unanimous 49-0 vote



Rep. Cathy McMorris Rodgers



Rep. Frank Pallone



WWW.NCPA.ORG

May 23, 2023

The Honorable Cathy McMorris Rodgers
Chair
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20510

The Honorable Frank Pallone
Ranking Member
House Energy and Commerce Committee
2107 Rayburn House Office Building
Washington, DC 20510

Dear Chair Rodgers and Ranking Member Pallone:

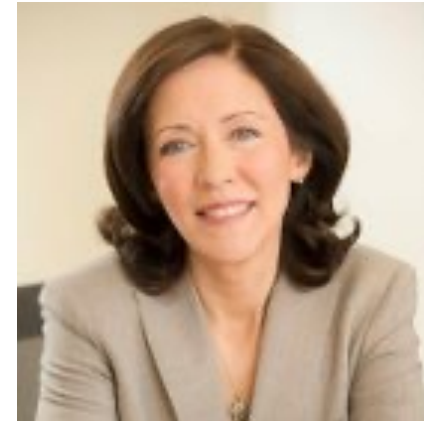
The National Community Pharmacists Association is writing today in support of H.R. 3561, the *Promoting Access to Treatments and Increasing Extremely Needed Transparency (PATIENT) Act*, which will bring much needed transparency to health insurers, hospitals, and pharmacy benefit managers (PBMs).





The Pharmacy Benefit Manager Transparency Act (S.127)

- Bans deceptive unfair pricing schemes, including spread pricing and arbitrary clawbacks
- Requires PBMs to report to the FTC revenue made through spread pricing and pharmacy fees
- NCPA-led amendment from Sens. Tester & Capito ensures that clawbacks are completely banned
- Passed out of Commerce Committee on a bipartisan 18-9 vote



Sen. Maria Cantwell



**Sen. Chuck
Grassley**



Protecting Patients Against PBM Abuses Act (H.R. 2880)

- Introduced, referred to House E&C, W&M committees: April 26
- Prohibit PBMs from reimbursing non-affiliated pharmacies at a rate less than they reimburse their own pharmacies → removing incentives to steer patients
- Delink PBM compensation from the cost of medications so that PBMs are no longer benefiting from ever increasing list prices and rebates.
- Prohibit spread pricing in the Medicare Part D program.
- Increase transparency by requiring PBMs to publicly report all rebates and fees they receive from drug manufacturers.



Rep. Buddy Carter



Rep. Lisa Blunt Rochester



Rep. Nicole Malliotakis



Rep. Jake Auchincloss



DIR Reform: The Fight Continues

Changes were delayed until January 1, 2024

Continued vigilance of PBM behavior

Amount and timing of payments and adjustments

But pharmacies should know concessions up front

How will pharmacies know their lowest possible reimbursement?

Check out our DIR Hangover webinar series at ncpa.org/dir-hangover

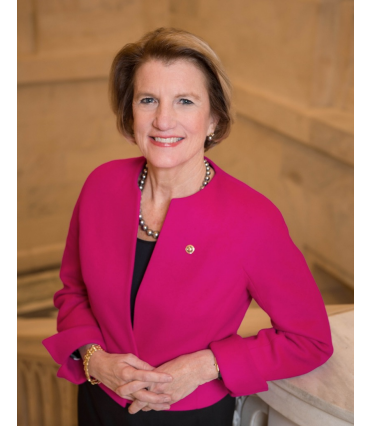


Protect Patient Access to Pharmacies Act (S. 2052)

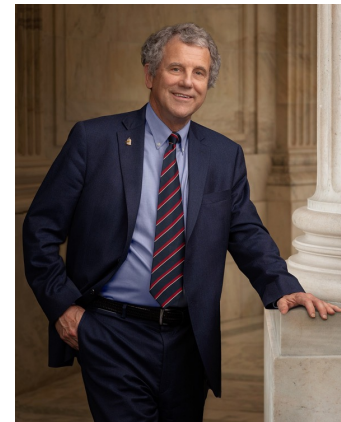
- Ensures that, **at a minimum, a pharmacy's costs to acquire and to dispense a covered Part D drug to beneficiaries are covered;**
- Standardizes and oversees the metrics PBMs and plans use to measure pharmacy performance and quality and ensures they are fairly applied, rewarding PBMs/plans for compliance; and
- Strengthens transparency in PBM payments to pharmacies.



Sen. Jon Tester



Sen. Shelley Moore
Capito



Sen. Sherrod
Brown



Sen. James
Lankford



Other Vital Federal Updates

Senate HELP Committee PBM Legislation

- NCPA has concerns with the HELP legislation (S. 1339, *the Pharmacy Benefit Manager Reform Act*) that could preempt state victories that reign in harmful PBM practices.
- 2,000 organizations/businesses demand Congress to preserve the status quo on ERISA preemption

Senate Finance Committee PBM Legislative Framework

- Senate Finance PBM Framework: NCPA thanks Chairman Wyden & Ranking Member Crapo for their bipartisan framework to address PBMs and lower drug costs. NCPA will work with the committee to remove hurdles to pharmacy access by advancing spread pricing reform in Medicaid, finalizing DIR fee reform, and modernizing any willing pharmacy provisions.
- Committee markup taking place on July 26, 2023



Provider Status Legislation

The Equitable Community Access to Pharmacist Services Act (H.R. 1770)

- Ensures patients can continue to access COVID-19 pandemic and pandemic-related health services from pharmacists and **provide payments for these services**
- Part B Coverage for the following:
 - COVID and flu-**vaccine administration**
 - COVID, flu, strep and RSV-**testing**
 - COVID, flu and strep- **treatment**

Pharmacy and Medically Underserved Areas Enhancement Act (S. 1491)

- Authorizes Medicare payments for pharmacist services in states that already authorize them

State Advocacy



State Priorities Overview

Medicaid Managed Care Reform

PBM Reform

Enforcement of existing state PBM regulations

Scope of practice, compensation for services





Medicaid Managed Care Reform

**Reimbursement
floor:** fee-for-service
methodology

Medicaid: bills in MA,
MD, NE, NM, TX, NY

Commercial: bills in
AK, FL, LA, MS, NC,
NM, OR



ncpa.org/medicaid



Medicaid Managed Care Reform

Reimbursement
floor: fee-for-service
methodology

**Single PBM, Single
PDL**

Medicaid: bills in MA,
MD, NE, NM, TX

Bills in KY, TX

Commercial: bills in
AK, FL, LA, MS, NC,
NM, OR



ncca.org/medicaid



Medicaid Managed Care Reform

Reimbursement
floor: fee-for-service
methodology

Single PBM, Single
PDL

**Carve-out pharmacy
benefit**

Medicaid: bills in MA,
MD, NE, NM, TX, NY

Bills in KY, TX

**New York State
effective April 1,
2023**

Commercial: bills in
AK, FL, LA, MS, NC,
NM, OR

Bills in: IL, MN, RI



ncca.org/medicaid



Medicaid Managed Care Reform

Reimbursement floor: fee-for-service methodology

Single PBM, Single PDL

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Medicaid: bills in MA, MD, NE, NM, TX, NY

Bills in KY, TX

New York State effective April 1, 2023

Commercial: bills in AK, FL, LA, MS, NC, NM, OR

Bills in: IL, MN, RI



ncca.org/medicaid



PBM Reform – Key Issues

NCPA is
tracking
240+
bills

Submitted
testimony in
10
states

Supported
partners in
25+
states

ncpa.org/pbm-reform



PBM Reform – Key Issues

**Key
issues
include:**

ERISA pre-emption

Retroactive fees

Patient steering

Spread pricing

Audit practices

Appeals processes

Mail order



PBM Reform Highlight

Florida SB 1550

- Began with Executive Order: July 2022
- SB 1550 was introduced by Sen. Jason Brodeur in the Senate, with HB 1509 introduced in the House by Rep. Linda Chaney
- Continued advocacy alongside partners and members
- NCPA joined the EMPOWER Patients Florida coalition, a savvy media campaign

Enforcement will be key





PBM Enforcement: NAIC Collaboration

PBM draft white paper

- NCPA submitted comments co-signed by 79 organizations.
- Comments focused on tools and resources for enforcement
 - PBM-specific expertise on staff
 - PBM-specific complaint forms
- Urged strengthening language to reflect recent court victories
- Advocated for uniform PBM enforcement when state law is silent on ERISA



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS

GUIDE TO UNDERSTANDING PHARMACY BENEFIT
MANAGER AND ASSOCIATED STAKEHOLDER
REGULATION

NAIC White Paper Draft as of April 16, 2023





PBM Enforcement: In the States

- Some state PBM regulators are taking active steps to preemptively enforce regulations



- Arkansas, West Virginia, and Tennessee now have **laws tying reimbursement rates to acquisition costs** (e.g., NADAC).
- Ongoing campaign to urge **pharmacies to contact state regulators to inform them of violations and other anticompetitive PBM practices.**



PBM Enforcement: Advocacy

- **DOI Complaint resource:** NCPA resource to help members file complaints with their state insurance regulators
- Advocating to NAIC for uniform state-level and PBM-specific complaint form
- NCPA to develop similar tool to facilitate patient complaints in the pharmacy



Complaints facilitate action!



Scope of Practice/Compensation

Adopting HHS authorizations post PHE

CLIA-waived tests and expansion of vaccine authority

Payment parity bills (via Medicaid and/or commercial plans)

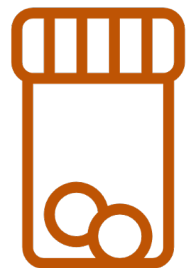
Provider Status (i.e. PrEP/PEP, hormonal contraceptives, tobacco cessation etc.)



Expanding Scope of Practice

NCPA continues to advocate for pharmacists to practice at the top of their license including

- Administering hormonal contraception
- HIV PEP/PrEP medications
- Tobacco cessation
- Long acting injectables, et al.





Expanding Scope of Practice: Bills of Note

Arkansas:

HB 1007 allows pharmacists to provide HIV PEP/PrEP medication pursuant to a statewide protocol

Indiana:

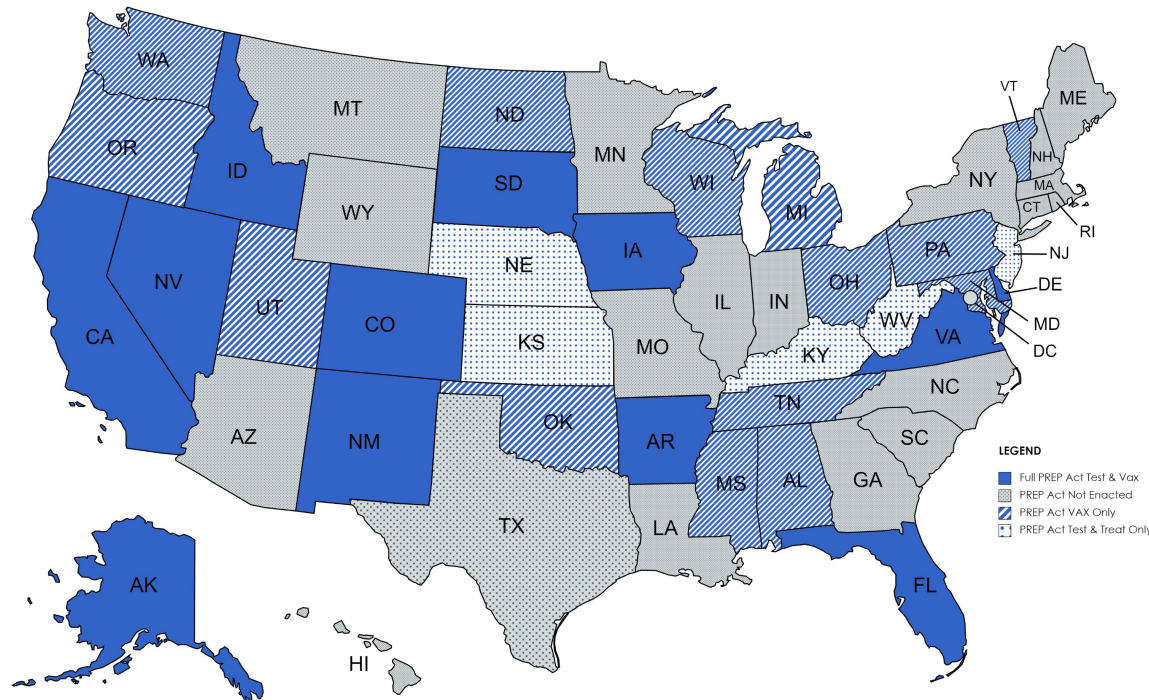
HB 1568 allows pharmacists to be prescribe and dispense “self-administered hormonal contraceptives” and pharmacists are eligible under Medicaid for reimbursement for these services

New Jersey:

SB 275 permits pharmacists to furnish self-administered hormonal contraceptives pursuant to a standing order with protocols established by the state Board of Pharmacy and Board of Medical Examiners



PREP Act Vaccine and Testing Authorities Among the States



Recent State Actions

Delaware – authorizes pharmacists to test & treat flu, strep, COVID and other conditions

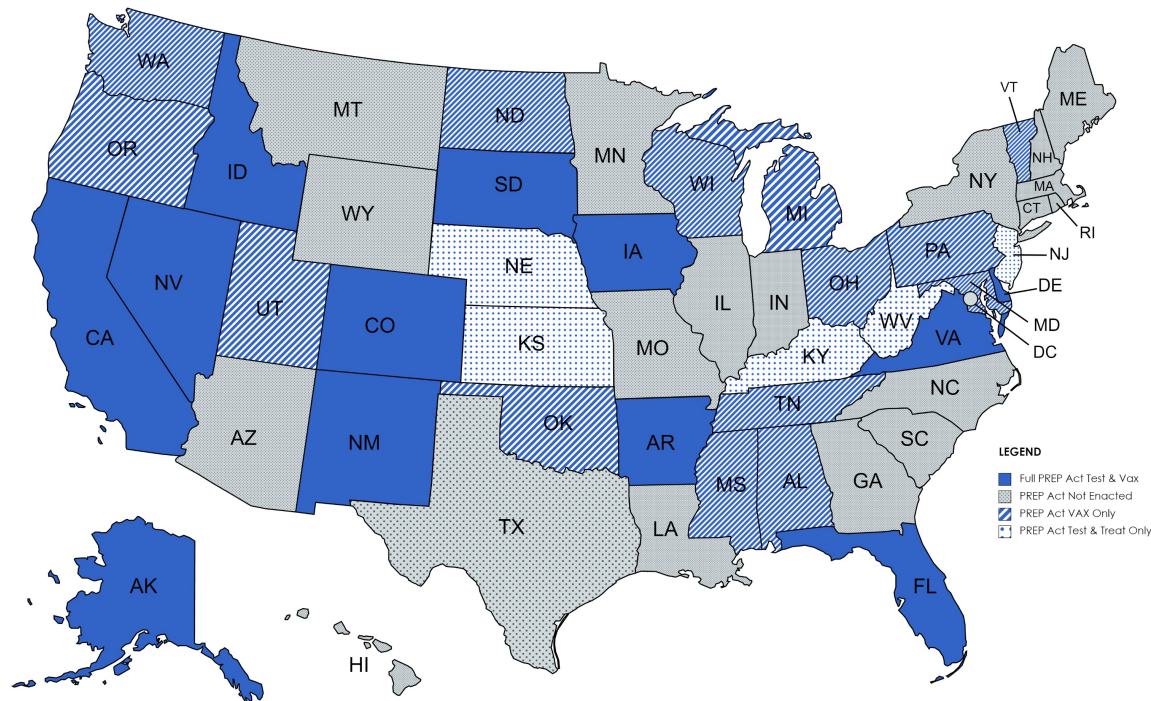
Kansas – allows pharmacists to initiate testing for flu, strep, UTI's

Montana – allows pharmacists to administer vaccines to individuals over 6 years of age

Virginia – permits pharmacists to administer ACIP & CDC recommended vaccines



PREP Act Vaccine and Testing Authorities Among the States



Only 12 states have fully enacted the PREP Act authorities.



Provider Status and Payment for Services

Maryland

Requires public and private plans to provide coverage for services rendered by a pharmacist within their scope of practice

Wyoming

Authorizes payment for pharmacy services under Medicaid.

Virginia

Pharmacy services are eligible for reimbursement under Medicaid

Maryland becomes the 9th state to cover services within pharmacy scope of practice for both commercial and private insurers. Wyoming and Virginia are the 12th and 13th states to provide reimbursement for pharmacy services under the state Medicaid plan.

Where to Go From Here

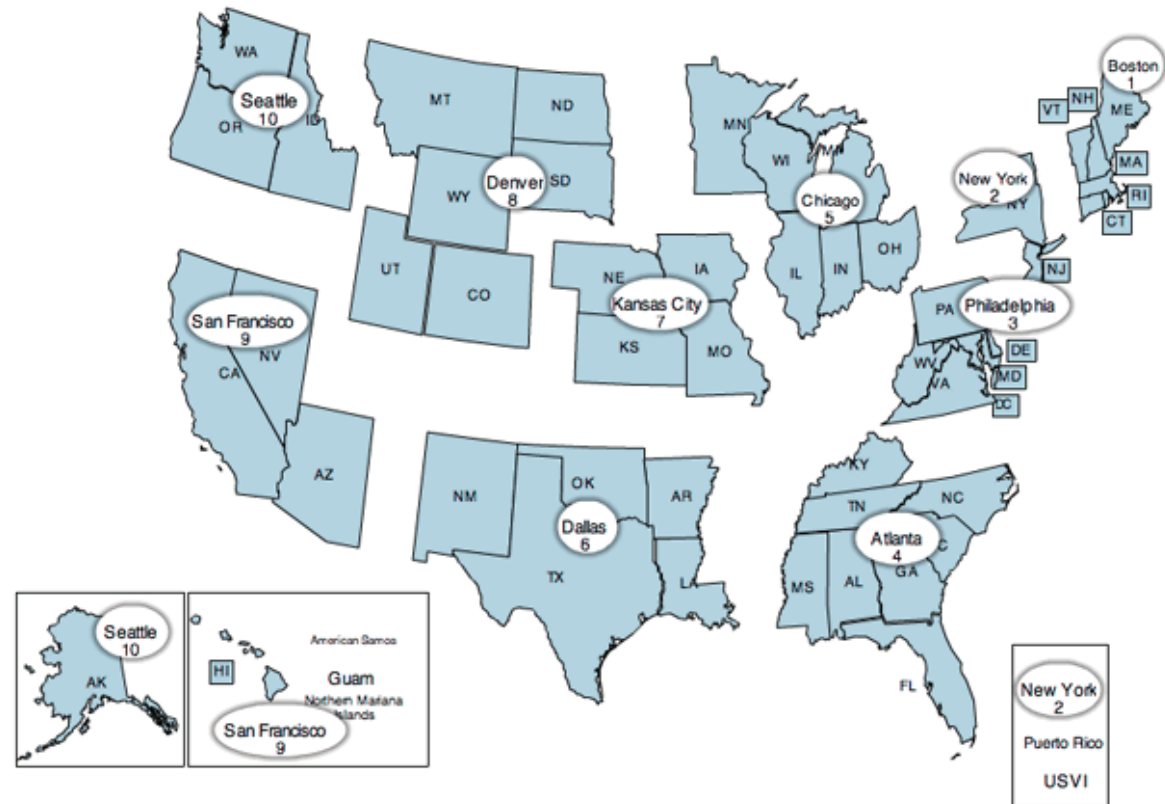


Concerns about Medicare Part D Payments and Contracts?

Reach out to your CMS Regional Offices!



CMS Regional Offices
Contact Information





Upcoming NCPA Meetings and Events

NCPA Month of Action

August 2023, Your Pharmacy

NCPA Annual Convention

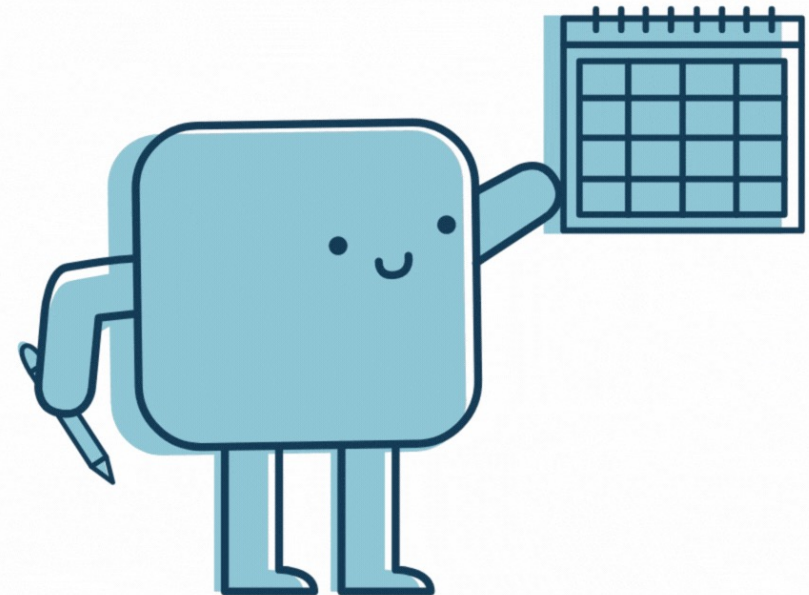
October 14-17, 2023, Orlando FL

Multiple Locations Meeting

February 28-March 2, 2024, Fort Myers FL

Congressional Pharmacy Fly-In

April 17-18, 2024, Alexandria VA





NCPA Month of Action

- Build on the growing momentum on Capitol Hill to enact meaningful PBM legislation and to keep the pressure on legislators to act, NCPA is again pushing a Month of Action and urging community and LTC pharmacies to **host pharmacy visits with Members of Congress during August.**
- With several pieces of PBM legislation advancing out of committees the focus will be on ensuring a meaningful PBM reform bill is passed and sent to President Biden.



For more information, or to express interest in hosting a pharmacy visit please reach out to Michael Rule; mrule@ncpa.org or (703) 838-2671 or use the QR code.



Advocacy Resources

- NCPA Priority Legislation
- PBM Materials
- Grassroots Toolkit
- More information on:
 - Inflation Reduction Act
 - Medical at Home
 - Medicare
 - Regulatory Advocacy
 - TRICARE
 - State Advocacy priorities



NCPA 2023 ANNUAL CONVENTION

- Access business education programs that cover every aspect of your pharmacy.
- Speak with hundreds of exclusive industry partners you won't find at other trade shows.
- Discover new opportunities and revenue streams to refine and grow your business.
- Take advantage of the countless chances you will have to connect with peers and exchange ideas.

See you in Orlando!



ncpa.org/convention

ORLANDO

SAVE THE DATE | OCT. 14-17, 2023





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