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NACDS, WSPA, NCPA File Key Legal Brief in Washington State Medicaid Lawsuit

State reimburses pharmacies significantly lower than any other state in the country, impeding patient access to care

Groups also urge CMS to require Washington State to comply with federal Medicaid reimbursement law

Olympia, WA. – The National Association of Chain Drug Stores (NACDS), the Washington State Pharmacy Association (WSPA) and the National Community Pharmacists Association (NCPA) filed an important legal brief this week with the Washington State Court of Appeals, challenging the state’s refusal to reimburse community pharmacies for the costs of providing care and services to disadvantaged Medicaid patients. The legal brief states that “because Washington’s fees do not reimburse pharmacies for their costs, those fees are dramatically lower than those of any other state in the country.”

NACDS, WSPA and NCPA argue that the state is reimbursing pharmacies far less than it costs pharmacies to serve the state’s Medicaid patients. Under the federal Medicaid program, each state sets fees to reimburse pharmacies for dispensing medications to low-income people. Those fees must compensate pharmacies for the actual costs incurred, but Washington State’s do not. The brief argues that it is unlawful and inappropriate for the state to reimburse pharmacies below their costs.

In 2016, the Centers for Medicare & Medicaid Services (CMS), which administers Medicaid reimbursements, put in place a new rule changing how states must reimburse pharmacies. A key part of the rule indicates that states must reimburse pharmacies for their actual costs in dispensing drugs to Medicaid beneficiaries. The CMS rule requires states to reimburse pharmacies for the costs of purchasing drugs wholesale, i.e., ingredient costs, and for the dispensing fees to Medicaid patients. The dispensing fees
must cover other costs of serving Medicaid patients, including reimbursing pharmacies for the costs of dispensing medications.

The legal brief argues that Washington State did not comply with the new CMS rule for cost-based dispensing fees and instead kept dispensing fees the same. In order to do this, it had to rely on data from private insurance plans—which do not track actual costs, as required by the CMS rule. Washington State kept in place the same dispensing fees it established many years ago, before the CMS rule was put in place.

NACDS, NCPA and WSPA also sent a letter to CMS asking the agency to “delay no longer in requiring Washington to comply with federal Medicaid reimbursement law like other states.”

The legal brief maintains that Washington State’s decision to continue to impose insufficient dispensing fees is based on a misreading of the requirements of the federal rule, and an unfair selection of data to ensure a fixed outcome.

The brief states that Washington State’s actions “exceed its authority, and are arbitrary and capricious.” The brief notes that Washington’s “rule and decision to pay below-cost dispensing fees are unlawful” and the state should be ordered “to set new rates that follow federal law.”

In March of 2017, NACDS, WSPA and NCPA sued the State of Washington to stop a “substantively and procedurally flawed” rule that would pay community pharmacies below the actual cost to dispense Medicaid prescriptions. The rule could jeopardize reliable patient access to medications responsible for ensuring patient health, and lead to more costly forms of care that result from untreated conditions.

The CMS rule specifically requires states to implement new professional dispensing fees that cover pharmacies’ costs of dispensing effective April 1, 2017. Therefore, the Court should order that the State must, retroactive to April 1, 2017, establish and pay new professional dispensing fees that properly reflect pharmacies’ costs of dispensing medications, and providing related services to Medicaid patients.

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NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS’ nearly 100 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 152,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 20 countries. Please visit NACDS.org.
The Washington State Pharmacy Association (WSPA) represents pharmacists, technicians, and interns practicing within community pharmacies, clinics, nursing homes and hospitals. WSPA members provide care to Medicaid patients throughout Washington's urban, rural and underserved communities. Please visit www.wsparx.org.

The National Community Pharmacists Association (NCPA®) represents the interests of America’s community pharmacists, including the owners of more than 22,000 independent community pharmacies. Together they represent an $80 billion health care marketplace and employ more than 250,000 individuals on a full or part-time basis. To learn more, go to www.ncpanet.org, visit facebook.com/commpharmacy, or follow NCPA on Twitter @Commpharmacy.

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