NCPA created the Advocacy Center to fight in the legislative and regulatory arenas for the nation’s 23,000 independent community pharmacies and their patients because of the vital role that pharmacists play in health care. NCPA works on many issues affecting community pharmacy. We work on Capitol Hill, in the agencies and in the courts to defend access to this critical sector of the health care system. In 2011, working with our pharmacist members we delivered thousands of messages to policymakers and continued to be your advocate on a litany of legislative and regulatory issues which threaten your livelihood and your patients’ well-being.
NCPA Opposes Express Scripts-Medco Merger, Educates Congress on Impact

NCPA has undertaken a coordinated effort to actively oppose the merger of Express Scripts Inc. (ESI) and Medco to form the nation’s largest pharmacy benefit manager (PBM). NCPA has actively worked to educate Senators and Representatives about the impact on patient access to pharmacy services and to community pharmacies should the Federal Trade Commission (FTC) allow the ESI-Medco mega merger to go forward. This merger, if approved, could control 40% of all prescriptions, more than 60% of all mail order prescriptions, and over half of all specialty drug distribution.

In 2011, two congressional subcommittees held hearings to specifically consider the potential implications of the ESI-Medco merger. On both occasions, NCPA community pharmacists were among a small set of witnesses asked to testify to Congress about the real challenges that the merger would pose for independent pharmacists and the communities and patients who rely on them.


- On December 6, Sue Sutter, RPh, from Horicon, Wisconsin testified at the Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights hearing entitled, “The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?”

At both hearings, lawmakers voiced strong concerns about the potential impact of the merger specifically on small independent community pharmacies and patients. They also said that they heard loud and clear from community pharmacists in their home states opposing the merger as well. Through NCPA’s advocacy efforts and the grassroots support of community pharmacists, a bipartisan group of nearly 40 Senators and Representatives have weighed in with the FTC and with key congressional leaders to raise concerns about the merger. They have asked for a thorough investigation of the impact of a new mega-PBM on consumers, patients, taxpayers, and pharmacies.

Legislation Introduced to Preserve Patient Access to Community Pharmacies

Three of NCPA’s top legislative priorities were introduced as bills in Congress in 2011. With the critical grassroots support of community pharmacists around the country, NCPA continues to work to generate support for these priorities by adding congressional cosponsors to these bills. We are also actively pursuing opportunities to include their provisions in other key legislation being considered in Congress.

- Preserving Our Hometown Independent Pharmacies Act of 2011 (H.R. 1946)—Introduced by Rep. Tom Marino (R-PA-10), this bill would create a more competitive marketplace for the delivery of pharmacy services by enhancing the ability of groups of independent community pharmacies to negotiate with PBMs.

Pharmacy Competition and Consumer Choice Act would create needed reforms to the PBM marketplace by increasing PBM transparency, providing protections from certain abusive and burdensome PBM audit practices, prohibiting plans from using reduced cost sharing to induce patients to use the PBMs’ own pharmacies, and allowing any willing pharmacy to participate in a network, so long as it is eligible to participate in a federal or state health plan.

Medicare Access to Diabetes Supplies Act (H.R. 1936)—Introduced by Reps. Aaron Schock (R-IL-18) and Peter Welch (D-VT-AL), this bill would exempt small pharmacies (no more than 10 pharmacy locations under common ownership) from the Medicare durable medical equipment (DME) competitive bidding program for diabetes testing supplies. This legislation would help preserve diabetic patients’ access to community pharmacies by not forcing them to obtain supplies via mail order companies.

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IRS 1099 Expanded Tax Requirement Repealed
Legislation repealing the 1099 tax reporting requirement that was included in the Patient Protection and Affordable Care Act of 2010 was signed by President Obama on April 14, 2011. NCPA was active in lobbying for repeal and has long been an active member of the Small Business Coalition for Affordable Healthcare, which was very vocal from the start in seeking legislative solutions to this potential problem. Had the new filing requirements been implemented in 2012, community pharmacies would have been forced to file as many as 200 additional 1099 forms per year.

(1997-71) in the House of Representatives and by Sens. Mark Pryor (D-AR) and Jerry Moran (R-KS) as S. 1058 in the U.S. Senate, the Pharmacy Competition and Consumer Choice Act would create needed reforms to the PBM marketplace by increasing PBM transparency, providing protections from certain abusive and burdensome PBM audit practices, prohibiting plans from using reduced cost sharing to induce patients to use the PBMs’ own pharmacies, and allowing any willing pharmacy to participate in a network, so long as it is eligible to participate in a federal or state health plan.

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2011 Pharmacy Visits
Every day the NCPA government affairs department works with members of Congress on Capitol Hill to help them better understand the day-to-day challenges facing community pharmacies, especially from government-funded prescription drug programs. The best way to do this is for a member of Congress to visit a community pharmacy in their district. These visits give elected officials a “behind the scenes” look at daily operations and also prove the important role our independent pharmacies play in their communities.

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pharmacies play in the community. When visiting a pharmacy, each member of Congress has a hands-on opportunity to speak with the hosting pharmacies, the staff and his or her constituents who visit the pharmacy. NCPR members held over 40 pharmacy visits with members of Congress in 2011. If you are interested in hosting your member of Congress for a pharmacy visit, please contact Bob Aldrich in the NCPR government affairs department at bob.aldrich@ncpanet.org or 703-838-2695.

Grassroots: NCPR Members Actively Engage in Influencing Congress on Legislation

NCPR implemented a robust grassroots program for 2011 on several issues. There were specific bills supported by grassroots such as the Pharmacy Choice and Competition Act of 2011 (H.R. 1971/S.1058), the Preserving our Hometown Independent Pharmacies Act of 2011 (H.R. 1946), and the Medicare Access to Diabetes Supplies Act (H.R. 1936). There were additional issues that required grassroots mobilization, such as the proposed ESI-Medco merger, which we vehemently oppose. In some instances, our grassroots activation was broad in scope and in others we took a narrower, targeted approach and focused our efforts on select members of Congress. Our activity on specific legislation and the ESI-Medco merger generated the following results:

- Grassroots on the ESI-Medco merger generated over 6,900 emails to members of Congress and helped secure congressional hearings on the proposed merger and nearly 40 congressional letters to the FTC.
- Grassroots on the Pharmacy Choice and Competition Act of 2011 (H.R. 1971/S.1058) generated 4,147 emails to congressional offices.
- Grassroots on the Preserving our Hometown Independent Pharmacies Act of 2011 (H.R. 1946) generated 1,339 emails to congressional offices.

In addition, we focused attention on the so called Super Committee that was charged with creating a plan to save at least $1.2 trillion in federal spending over the next 10 years. While the Super Committee failed to reach a compromise, we were engaged throughout the process to ensure the views of independent community pharmacies were represented and considered.

Fighting the PBMs and Mandatory Mail Order

In 2011, NCPR introduced various materials and economic models that helped make the case to public and private plans that mail order is not the solution to decreasing drug costs or improving patient’s quality of care. Working with state pharmacy groups, we also helped push back against mandatory mail order programs in public and private programs. Here are some examples where NCPR involvement made a difference:

Regions Bank Says ‘No’ to Mail

In December of 2011, Regions Bank rescinded its policy requiring employees to fill prescription drugs for chronic conditions through mail order pharmacies. This new policy was scheduled to be implemented on Jan. 1, 2012. The policy would have prevented Regions’ 27,000 employees and their families from utilizing community pharmacies.
BB&T Bank Says ‘No’ to Mail
BB&T agreed to rescind its mandatory mail order decision, opting instead to reemphasize its employees’ choice in filling their maintenance prescriptions, including at independent community pharmacies. NCPA discussed the value of neighborhood pharmacies to local communities; detailed the often-overlooked shortcomings in mandatory mail order plans and cost estimates; and proposed alternative cost-savings solutions, such as maximizing the appropriate use of generic drugs.

New York State Says ‘No’ to Mail: Anti- Mandatory Mail Order (AMMO) Bill Enacted
Legislation (A5502-B) was signed into law by New York Governor Andrew Cuomo (D) that would ban mandatory mail order in certain plans and restore a patient’s right to choose where they fill their prescriptions. This bill was signed despite a long and deceptive advertising campaign by the PBM industry that attempted to mischaracterize the bill as a measure that would prohibit plan sponsors and employers from realizing “tried and true” cost saving measures. This bill was also supported by a broad cross-section of New Yorkers—including the state Retail Council, the state Medical Society, and AARP. Working with the state association, NCPA submitted numerous letters to the governor and deployed significant grassroots efforts in support of the legislation before it was finally a success!

States Enact Badly Needed PBM Reforms
Many other states were also successful in passing some level of PBM legislation that would protect patients and independent community pharmacy. These bills dealt with a range of issues including transparency provisions or establishing fair audit provisions. NCPA provided states with model PBM transparency and fair-audit legislation and in some cases submitted testimony or letters of support for these bills.

States that were successful in passing PBM Fair Audit legislation included Arkansas (S.B.789), Kansas (H.B.2182), North Dakota (H.B.1418), North Carolina (H.B.644), Oklahoma (S.B.673), Maryland (S.B.974), and Texas (H.B.2922).

States that were successful in passing PBM Regulation/Transparency legislation were Utah (H.B.16) and Mississippi (S.B.2445). Also, Oklahoma was successful in reversing mandatory mail order provisions in their state through regulatory action.

MEDICARE
The Medicare program is a very important part of community retail pharmacies’ business, as approximately 30% of NCPA members’ business was attributable to Medicare Part D in 2010. In addition, many of our members also serve as DME suppliers under Medicare Part B. This past year NCPA achieved several important victories on behalf of independent community pharmacy.

- Delay of Short Cycle Dispensing in Long-Term Care in Medicare Part D: In response to NCPA advocacy efforts, CMS announced that it would delay implementation of its proposed Medicare Part D long-term care “short-cycle” rule for one year and would modify the “short-cycle” dispensing requirements to be less onerous for independent pharmacies. CMS’ original proposals for short-cycle dispensing would have proven costly and unduly burdensome for small business pharmacies.

- Double Revalidation Fees for Medicare Part B Suppliers: Starting this year and through upcoming years, CMS will be imposing revalidation fees, every three to five years, on Medicare Part B DME suppliers and Part B mass immunizers. Pharmacies that are enrolled as both will have to pay the revalidation fee twice, once as a DME supplier and once as an immunizer. NCPA has been lobbying and will continue to lobby CMS to reverse this unfair double billing policy.

- 2012 Valid Prescriber Identifier Requirement and 2013 Individual National Provider Identifier (NPI) Requirement for Part D Claims: In 2012, CMS will more strictly enforce the requirement that a valid prescriber identifier be submitted with all Part D prescriptions. However, there is no single complete and accurate database that contains all prescriber identifiers. In response to NCPA’s advocacy efforts, CMS has indicated that Part D plan sponsors should provide pharmacies with the opportunity to remedy invalid prescriber identifiers on prescription claims prior to recoupment.
• **Restrictive Networks:** More and more Part D plans are moving to preferred network plans for 2012. These plans charge higher co-pays to beneficiaries who get their medications from non-preferred providers, such as NCPA members. NCPA is continuing to battle with CMS regarding vague or misleading information on the Medicare Plan Finder tool and within Part D preferred plan advertising, which results in beneficiaries falsely believing that they can get low or $0 co-pays from any provider. This is an ongoing battle, but as a result of NCPA’s advocacy efforts, in late 2011, CMS forced two preferred plans to alter their advertising to avoid misleading beneficiaries.

**MEDICAID**

Hand in hand with Medicare, the Medicaid program is also a very important part of community retail pharmacies’ business. Approximately 16% of NCPA members’ business was attributable to Medicaid in 2010. Through health care reform legislation, the Medicaid program is scheduled to greatly expand in upcoming years and NCPA has take a lead role in influencing changes within the context of this upcoming expansion.

• **Pushing Back Against AMP Based FULs for Generics:** While a proposed rule to define how AMPs should be calculated has yet to be released, CMS did begin to move forward this year with publishing draft lists of FULs based on manufacturer reported AMPs. As of the end of 2011, CMS released three draft lists, all of which seriously concerned NCPA. NCPA met with federal Medicaid officials and submitted comments to CMS on all of the draft FUL lists, as each was plagued with many problems, including hundreds of generics where the FUL was lower than pharmacy acquisition costs. It is not clear when or if CMS will require the states to use these FULs for reimbursement purposes. NCPA believes that at a minimum AMPs should be used to set FULs only when a final regulation on AMP is published.

**FDA**

In 2011 the FDA continued to focus on many issues of importance to community pharmacy, namely initiatives involving Risk Evaluation and Mitigation Strategies (REMS), compounding, patient medication Information, and track and trace. Many of these initiatives, primarily centered on drug manufacturers, have a direct impact on the practice of pharmacy. NCPA will continue to advocate for independent community pharmacy to ensure these efforts do not have burdensome downstream effects.

**Patient Care Models**

Through health care reform, Congress and the Department of Health and Human Services are attempting to change the way that health care is delivered in the United States. Policymakers are in the process of developing a number of initiatives that seek to decrease health care spending, while increasing the quality of care that patients receive. It is important that pharmacists have a place at the table within these new health care delivery models. Accordingly, in 2011, NCPA worked hard to promote to policymakers the valuable role that pharmacy can play within accountable care organizations (ACOs). As a result of NCPA’s regulatory comments, CMS provided express guidance that Medicare Part B supplier pharmacies are encouraged to help create ACOs and that non-Part B supplier pharmacies are encouraged to contract with ACOs to provide important quality improving and cost-saving services, such as medication therapy management, diabetes self-management training, and vaccinations.

**Nurse as Agent**

NCPA continues to advocate on behalf of our LTC members for a workable solution to the “nurse as agent” issue – that is a solution that will grant nurses working in LTC facilities the authority to act as an agent of the prescriber in order to transmit controlled substance prescription orders to LTC pharmacies. The DEA issued a policy clarification in 2010 allowing this practice but with very cumbersome requirements that are not being used on a wide-scale basis today. In 2011, Sen. Herb Kohl (D-WI) introduced the Nursing Home Resident Pain Relief Act, to help nursing home residents have timely access to Schedule II pain medication in emergency situations. NCPA continues to work as part of a large LTC stakeholder workgroup with the Senator’s office to ensure this is a workable solution.
While the majority of the nation’s attention will be on the presidential election in 2012, there will be literally hundreds, if not thousands, of races in 2012 that have the potential to impact community pharmacy. As we saw in 2010, it was not only the Republicans’ seizing the majority in the House of Representatives and making significant gains in the Senate that impacted the political landscape, but it was also major Republican victories at the state and local level across the country that set the stage for the Republicans to strengthen their majorities through the redistricting and reapportionment process that occurs every decade.

As uncertainty swirls around who will be the Republican nominee to face President Barack Obama next fall, there is likewise similar uncertainty about who will be chosen to represent their respective party in several marquee match-ups for Senate and House seats next fall. Even though there may be uncertainty as to whom the final nominees might be, there are several contests that will be watched closely to determine how the election and ultimately how Congress and the resulting policies will take shape in the years following 2012. These election factors will have significant implications for the future of the Medicare, Medicaid, and the new health care reform law, all programs of importance for community pharmacy.

Senate Races
Current Senate Lineup: 51 Democrats, 47 Republicans, 2 Independents (33 seats up in 2012)

Of the 33 seats, 23 are presently represented by Democrats, while 10 are held by Republicans. If Republicans net a gain of four seats in the 2012 election, they will overtake Democrats as the majority party in the United States Senate. While 22 of those seats up are in states that Barack Obama carried in 2008, observers and odds makers give Republicans a better-than-even shot at taking the majority. Part of the reason for this sentiment is because of Democratic retirements in seven states that either lean Republican or are states with potentially strong Republican candidates. Democratic retirements in North Dakota, Nebraska, Virginia, Wisconsin, New Mexico and Hawaii, along with retirement of Connecticut Sen. Joe Lieberman an independent who caucuses with Democrats, means that Democrats not only must fend off strong challenges in states such as Montana, Michigan, and Ohio, but that they must also recruit new candidates in these other states as well. Conversely, only two Republican senators have announced their retirements, and those states (Arizona and Texas) are largely expected to return Republican senators to Washington; in addition, at present, political pundits only see two sitting Republican Senators, Dean Heller of Nevada and Scott Brown of Massachusetts, as facing serious challengers that could result in a Democratic pickup. Sen. Richard Lugar (R-IN) is facing a strong primary challenge, which may impact the outlook for the seat should he be defeated in the primary, but predictions still tilt heavily toward Republicans retaining the seat. Pharmacy-friendly Senators that are retiring include Herb Kohl (D-WI) and Kent Conrad (D-ND).

House Races
Current House Lineup: 242 Republicans, 192 Democrats, 1 vacancy

In 2010, Republican made historic gains to take control of the House majority. With Republican victories in 2010 that extended to the states, it meant that Republicans have the opportunity to shore up support for many of their members who won in seats that were previously held by Democrats through the reapportionment and redistricting process. In addition, it has also meant that Republicans and Democrats alike have sought to create districts that are more (or less) likely to return Democratic or Republican representatives, respectively, to Washington. As a result, Democrats in Illinois and a redistricting commission in California have created seats that are less likely to elect Republicans while Republicans in states like North Carolina, Michigan, and Pennsylvania have created districts that are less likely to return Democratic Representatives to Washington, D.C. Court challenges and legal deliberations mean that some seats have yet to be defined, but the redistricting process is not expected to yield much, if any, additional seats for Republicans in the coming election. Regardless of the exact shape of congressional districts, Democrats will face a daunting task of retaking the House this fall as they will need to net a gain of 25 seats in order to regain the majority they lost in 2010. Republican made historic gains to take control of the House majority. With Republican victories in 2010 that extended to the states, it meant that Republicans have the opportunity to shore up support for many of their members who won in seats that were previously held by Democrats through the reapportionment and redistricting process. In addition, it has also meant that Republicans and Democrats alike have sought to create districts that are more (or less) likely to return Democratic or Republican representatives, respectively, to Washington. As a result, Democrats in Illinois and a redistricting commission in California have created seats that are less likely to elect Republicans while Republicans in states like North Carolina, Michigan, and Pennsylvania have created districts that are less likely to return Democratic Representatives to Washington, D.C. Court challenges and legal deliberations mean that some seats have yet to be defined, but the redistricting process is not expected to yield much, if any, additional seats for Republicans in the coming election. Regardless of the exact shape of congressional districts, Democrats will face a daunting task of retaking the House this fall as they will need to net a gain of 25 seats in order to regain the majority they lost in 2010.
2010. Congressman Mike Ross (D-AR-4), long a champion of independent community pharmacy, is retiring.

**NCPA Political Action Committee (NCPA PAC)- Your Voice on Capitol Hill**
The NCPA PAC is a way to ensure that our industry speaks with one voice in Washington, D.C., and has a powerful political presence in the nation’s capital. In 2011, the NCPA PAC contributed $450,000 to pro-pharmacy candidates. Overall, the NCPA PAC provided 62% of its contributions to Republicans and 38% to Democrats. With the continued political involvement of NCPA member’s nationwide, independent community pharmacy continues to promote a pro-pharmacy agenda on Capitol Hill.

**Pharmacy Fundraiser for Key Members of Congress Successful**
In March, over 50 NCPA members participated in a very successful fundraiser for Congressman Fred Upton’s (R-MI-06) congressional campaign. In 2010, Upton was named Chairman of the influential Committee on Energy and Commerce, which has jurisdiction over Medicare Part B, Medicaid, and PBM issues. In addition, NCPA members also participated in successful fundraisers for Sen. Roger Wicker (R-MS) at the NCPA Legislative Conference in May and Sen. Bob Corker (R-TN) at the NCPA Annual Convention in October.

**2011 NCPA Member PAC MVPs ($5,000 maximum personal contribution allowed by law)**
- James Coast, Cimarron, KS
- Danny Cottrell, Brewton, AL
- Boyd Ennis, Birmingham, AL
- Stephen Giroux, Middleport, NY
- H. Edward Heckman, Stoughton, WI
- B. Douglas Hoey, Alexandria, VA
- Edmund Horton, Stephenville, TX
- Tony Ogden, Pasadena, TX

**2011 NCPA Member PAC Champions ($2,500 or more personal contribution)**
- Shelley Bailey, Portland, OR
- Ralph Bouvette, Frankfort, KY
- George Brookins, Lincolnton, NC
- John Carson, San Antonio, TX
- David DeVido, Houston, TX
- Robert Greenwood, Waterloo, IA
- Sherwood Klein, Ellicottville, NY
- John Lassiter, Del City, OK
- Joseph Lech, Tunkhannock, PA
- Kenneth Long, Thomson, GA
- David Miller, Grand Rapids, MI
- Doug Moore, Sulphur Springs, TX
- William Moore, Sinton, TX
- Thomas Quinlan, Wayland, NY
- Darrin Silbaugh, Carlisle, PA
- Troy Simons, Perry, OK
- Mathew Slakoper, Croydon, PA
- David Smith, Brookville, PA
- Tammy Stutes, Abbeville, LA
- Joe Weaver, Sulphur Springs, TX
- Lonny Wilson, Oklahoma City, OK

**Help Us Help You; Support NCPA’s Legislative/Legal Defense Fund (LDF)**
The Legislative/Legal Defense Fund (LDF) supports NCPA’s ongoing political advocacy initiatives including lobbying activities, research, coalition building, grassroots mobilizations, targeted advertisement, and lawsuits in the states. Government controls more and more of our business and NCPA battles to ensure your ability to grow you business and serve your patients. The LDF is our war chest in the fight. All of our success—this year and into the future—depends on your support.

**2011 LDF Platinum Donors ($200,000 or more annually)**
- AmerisourceBergen, Chesterbrook, PA
- Cardinal Health, Dublin, OH
- Compliant Pharmacy Alliance Cooperative, Stoughton, WI
- Independent Pharmacy Cooperative, Sun Prairie, WI

**2011 LDF Gold Donors ($10,000 or more annually)**
- American Associated Pharmacies, Scottsboro, AL
- American Pharmacy Cooperative, Inc., Bessemer, AL
- American Pharmacy Services Corporation, Frankfort, KY
- Georgia Academy of Independent Pharmacy, Atlanta, GA
- Rochester Drug Cooperative, Inc., Rochester, NY
- Texas Academy of Independent Pharmacists, Austin, TX

**2011 LDF Silver Donors ($5,000 or more annually)**
- Ashville Apothecary, Ashville, OH
- Buy Rite Drugs, Albany, GA
- Fagen Pharmacy, Demotte, IN
- Greenwood Drug (Waterloo, IA)/ Denver Drug, Inc. (Denver, IA)
- Kraupner Pharmacy, Brooklyn, NY
- Mast’s Pharmacy, Inc., Brookfield, OH
- Richlands Pharmacy Assc./Raven Drug, Raven, VA