

# Louisiana Independent Pharmacies Association

## What's New and What to Watch

### LIPA Newsletter:

Bringing you the latest news and information concerning independent pharmacies and the profession at-large....



While the Thanksgiving and Acadian Day holidays are this week it has not been a slow week for LIPA as we have been busy on multiple fronts! With the focus on gratitude and appreciation during this season, all of us are thankful for our LIPA members and we are committed to serving you.

### **Latest on LIPA's Litigation Against Express Scripts in U.S. Fifth Circuit Court of Appeals**

As you know, one of LIPA's primary functions is to advocate on behalf of Louisiana's independent pharmacies in the Legislature, in front of regulatory and administrative agencies, as well as in the courts. LIPA continues to advocate on your behalf regarding the Ten Cent Provider Fee. Some PBMs, notably ESI, refuses to reimburse pharmacies the \$.10 provider fee on Medicare plans. ESI takes the position that Medicare displaces Louisiana law and that it is not required to reimburse the provider fee. Of course, the Louisiana Department of Health still mandates the \$.10 remittance from you.

To resolve this issue, we filed suit in federal district court to ask the federal court to decide whether Medicare displaces the relevant Louisiana statutes. We won that issue in the district court and ESI appealed to the United States Fifth Circuit Court of Appeals. This week, LIPA filed its brief. ESI will reply to this brief in mid-January and the Court might set oral arguments. We hope for a decision in early 2022 to **finally** resolve this issue one way or the other.

### **Opioid Lawsuits**

Earlier this week, a jury in Ohio found CVS Health, Walgreens, and Walmart liable for creating a "public nuisance" by its insufficient oversight of opioid prescriptions in the two Ohio counties that sued the pharmacies earlier this year. After similar trials in Oklahoma and California, the jury in Ohio was the first to hold the defendants liable, specifically that they "engaged in intentional and/or illegal conduct that was a substantial factor in producing the public nuisance." Similar trials are occurring in West Virginia, New York, and Washington.

This was the first trial against pharmacies directly instead of manufacturers and distributors. The two Ohio counties alleged the pharmacies dispensed prescriptions despite red flags indicating recreational use and that they shipped opioids through their distribution channels despite obvious signs the orders exceed legitimate medical needs. The pharmacies maintained their dispensing was lawful and responsible, and noted the opioids were overseen by number regulators and other medical experts that were responsible for originating the prescriptions. All three immediately vowed to appeal the liability verdict.

In a separate lawsuit, the U.S. Supreme Court halted the U.S. Department of Justice lawsuit against Walmart alleging their pharmacies fueled a national crisis of opioid abuse through reckless dispensing of opioids. The stay came after two appellate circuits, the 10<sup>th</sup> and 11<sup>th</sup>, announced they would hear and consolidate cases in which federal district courts convicted doctors on improper prescribing of controlled substances.

The U.S.S.C. is expected to clarify the circumstances in which prosecutors can target prescribing of narcotic painkillers outside the “usual course” of professional practice.

### ***Shot for \$100 at Louisiana Community Pharmacies Initiative Kicks Off Next Week!***

The Short for \$100 vaccine incentive in which people getting their first dose of COVID vaccine can receive a \$100 VISA debit card **is being expanded to community pharmacies** beginning December 1<sup>st</sup>! This is something that LIPA has been advocating for to LDH since the program was initially announced back in August as you were getting inquiries. LDH has committed to providing 5,000 cards for distribution by community pharmacies and LIPA will manage the initiate for the Department. The program is scheduled to end December 31 or when all cards are exhausted, whichever is sooner.

LIPA reached out to our entire membership via last Friday’s newsletter as well as a blast e-mail and fax on Monday to identify pharmacies interested in participating. We have 48 pharmacies located in 26 parishes and 38 different towns/cities who will be *Shot for \$100* sites. A short orientation was provided on Wednesday and will be repeated via Zoom on Sunday November 28<sup>th</sup> at 3 PM.

### **2021 Medicare Open Enrollment is Nearing the End**

Louisiana Medicaid’s annual open enrollment ends on November 30<sup>th</sup> while Medicare’s deadline is a week later - December 7<sup>th</sup>. Although open enrollment began on October 15<sup>th</sup>, many beneficiaries wait until the proverbial “last minute” to decide so you can anticipate the need your patients, families and neighbors will have coming this week.

### **Joint Insurance Committee Meeting on 12/1 to Discuss Impact of Hurricane Ida**

On Wednesday, December 1 at 9:30 AM the Joint Insurance Committee will be meeting in Room 5 at the Capitol to discuss “the impact of Hurricane Ida relative to issues, individuals’ needs and concerns.” We expect this hearing to be dominated by property and casualty matters but we know that our member pharmacies may have been impacted by health insurer and PBM actions. We encourage you to use this opportunity to bring forward to the legislature any insurance issues related to Hurricane Ida that they need to be aware of. You can do so in any of the following ways:

1. Submit a prepared written statement in accordance with House Rule 14.33 in lieu of appearing before the Committee. If you e-mail the statement to [h-ins@legis.la.gov](mailto:h-ins@legis.la.gov) and it is received prior to noon Tuesday, November 30, 2021, your statement will be distributed to the committee members prior to the meeting.
2. Attend the Committee Meeting on December 1 and upon arrival go to the table in the front of the room and fill out a card indicating you want to speak.
3. Randal and Donelson Caffery are both available to answer any questions you may have.

### **New Oral Antivirals for Treatment of COVID Expected to Be Available in December**

On Tuesday, NCPA’s daily newsletter noted that state health department will be allocating antiviral products and urged pharmacies to work with their state health department (and participating federal partner if applicable) if they want to be a location for patients to be able to get these products. As have been communicating for several weeks, LIPA is working closely with LDH and the OPH Pharmacy Director Leah Michael in planning for the rollout and allocation of oral antivirals next month. In a conversation with her this week she reiterated that the initial supply of oral antivirals is expected to be very scarce and not every parish or every pharmacy will receive an allocation.

NCPA noted the “unknowns” about the oral antiviral that remain to be answered, including:

- payment for dispensing the product,
- payment for patient assessment by pharmacists, and
- conditions of use for the product(s) (e.g., required testing, etc.)

Both Molnupiravir from Merck and PAXLOVID will be five- day courses of treatment. According to a [New York Times story](#) in the case of Molnupiravir, the patient will take 4 capsules twice a day for a total of 40 pills.

- [Merck's Covid Treatment Pill: What to Know About Molnupiravir - The New York Times \(nytimes.com\)](#)
- [Emergency Use Authorization application submitted for COVID-19 antiviral discovered at Emory | Emory University | Atlanta, GA](#)

Oral antivirals for treatment of COVID are expected to be available before the end of the year from both Merck and Pfizer. The FDA Advisory Committee is scheduled to consider Molnupiravir on Tuesday, November 30<sup>th</sup> and earlier this week, Pfizer officially submitted their request for EUA approval of their oral antiviral Paxlovid. News stories indicate that both are expected to be available before the end of December. While new COVID cases are currently “down” in Louisiana, the virus is raging in other states such as Minnesota, Colorado, and New England states and we could see another surge.

Business Insider [reported](#) on Thursday November 18<sup>th</sup> that the U.S. government is purchasing ten million Paxlovid courses of treatment from Pfizer at a cost of \$5.29 billion (\$529 per course). In trials, high-risk patients were treated within 3 days of symptom onset. If authorized or approved, PAXLOVID will be administered at a [dose of 300mg](#) (two 150mg tablets) of PF-07321332 with one 100mg tablet of ritonavir, given twice daily for five days.

LDH has stressed that initially the limited supply of the drugs will be allocated by the federal government to states who will then allocate to providers within their state. OPH expects the initial supply to be very limited—perhaps 5 to 10 doses every one or two weeks for each site, and not enough to meet the demand. OPH’s Pharmacy Director estimates Louisiana’s pro-rata share will be about 1.8% of the national amount to be allotted.

Since last week’s newsletter, we have added two additional pharmacies to the list of community pharmacies in Louisiana interested in receiving and dispensing oral antivirals for treatment of COVID bringing the total to 133.

**If your pharmacy would like to be added to the list for consideration, you can send an e-mail to [vaccines@lipa.org](mailto:vaccines@lipa.org) with the name of your pharmacy, full address, and phone number. *Note that your pharmacy does not need to be enrolled as a COVID vaccine provider to be considered for allocation of COVID oral antivirals***

#### **LIPA’s GroupMe Tool . . .**

This week, a message posted by one of our pharmacists in the *GroupMe* chat group culminated with LDH issuing written guidance on what vaccine providers should do when a COVID vaccine for which the patient has verification is not showing up in LINKS. The chat group continues to grow, with **ten** additional members added this week! If you haven’t signed up for the chat group yet-- or have someone else at your pharmacy that needs to be added--, all we need is your name, your pharmacy’s name, and your cell phone number, which can be provided to Danielle Hodge by calling her at 225-308-2030 or emailing [hodge@lipa.org](mailto:hodge@lipa.org). It’s that easy to be added!