

# 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....



### Another eventful week at LIPA . . .

Now that we are almost two months into 2022, we have an idea of the multiple adverse implications for our pharmacies of having another ~ 250K Louisianans (state employees, retirees, and dependents) with Express Scripts as their PBM. Addressing the issues that have emerged has been “front and center” for your LIPA team this week:

- The overwhelming consensus from our recent member survey is that you are consistently being reimbursed below cost for brand name drugs dispensed to OGB members. This is made even worse by the fact that the Express Scripts dispensing fee is far less than the \$10.00 that Medicaid PBMs are required to pay to community pharmacies. The fact is that the reimbursement for ingredient cost for **non-Medicaid** scripts is assumed to have a profit margin built-in and you are not seeing that. In fact, in many cases if you fill the script, you do so at a loss.
- We have seen an Express Scripts letter sent to SOGB members that we believe is in clear violation of the provision in RS: 40 2870 A (5) that expressly prohibits a PBM *to use in any manner prescription drug information regarding a beneficiary obtained through a beneficiary's use of a prescription for purposes of marketing, solicitation, consumer steering, referral or any other practice or act*, [emphasis added and we think this pretty much covers all bases] *except as otherwise provided for in this Section, that provides the pharmacy benefit manager or any of its affiliates or subsidiaries economic power or control over pharmacists or pharmacies or interfere in the free choice of a beneficiary*. The offending letter is characterized as the patient’s “personalized monthly medication report” and states “Express Scripts wants to let you know about some important plan information that affects how you get your prescriptions filled. In order to potentially save you time and money, some of your medication may need to be filled through a certain type of pharmacy,” with the recommendation being Express Scripts Mail Order Pharmacy and how to transfer the prescription.
- Failure of Express Scripts to send the Remittance Advice on the **date of payment** and include detailed, itemized information for each claim as required in [R.S. 22:1856](#) making it impossible to see how DIR fees are being calculated. The DIR fees are shown as a lump sum deduction at the end of the Remittance Advice.

- A pharmacy reported a case in which Express Scripts denied a prescription (Eliquis) at their local pharmacy, but the patient subsequently received a letter indicating it was approved if obtained through Express Scripts Mail Order Pharmacy.

LIPA has written a letter to Express Scripts, outlining their concerns regarding mailing letters to OGB beneficiaries trying to instruct patients to transfer to Express Scripts Pharmacy.

[Letter to ESI](#)

### **Encouraging Signal from FTC This Week!**

**Politico** reported today in their newsletter that the FTC is seeking comment on PBM Practices and issued a [request for information](#) on Thursday (2/24/22) how the business practices of pharmacy benefit managers affect patients, doctors, employers, pharmacies, and other businesses in the prescription drug space. **Politico** notes that the comment call, open through April 25<sup>th</sup>, comes a week after the independent agency deadlocked on whether to begin a study of the biggest PBMs, the finding of which could have formed the basis of a future investigation. You can view the Call for Comments [here](#). Of the first 4 comments submitted, 3 of them are from patients who are being adversely impacted by PBMs, reinforcing that this is not just about pharmacies and their bottom line. Comments really are easy to post—you can even do it from your smartphone or device, and you can encourage patients who are having issues because of a PBM to comment.

The current Federal Trade Commissioner vacancy needs to be filled as quickly as possible with Senate confirmation of the current nominee Alvaro Bedoya to prevent another deadlock when the PBM issue comes again before the Commission for consideration.

We saw additional evidence this week that the Administration considers the vertical consolidation within the healthcare industry to be anticompetitive. Also on Thursday, the U.S. Justice Department filed suit to block United Health Care's \$8 billion dollar acquisition of Change Health Care. According to this Reuters [story](#), this is a continuation of the Biden administration's "tougher approach" to anti-trust.

### **Speaking of Comments . . .**

#### **Have you submitted Comments yet on Medicare DIR Fees?**

The deadline for doing so is just 10 days away (5 PM Eastern Time on March 7<sup>th</sup>). As of this morning—1,050 Comments on the Proposed Medicare 2023 Policy & Technical Changes—which would **reign in DIR fees**—have been published. This is a rare opportunity for you to weigh in and let CMS know what DIR fees mean for your pharmacy and how they are jeopardizing continued access to prescription drugs for Medicare beneficiaries. We would note that Louisiana independent pharmacies were "canaries in the coal mine" when it comes to DIR fees. Then LIPA Board Chairman Andy Soileau was one of the first to bring attention to it. Representative Lebas' 2016 legislation was intended to stop the spread of these kinds of "after the fact" charges to commercial plans. We see with effective rate pricing what those have become.

Don't know where to begin? We looked at some of the 304 Comments published in the last week and while many of them are identical--using a form letter that begins with "I applaud CMS" -- the ones that make the most compelling case to us are written in "living room language." Below are a couple of examples from new Comments posted this week:

1. *DIR fees are a back-end way for PBMs to rip off both the elderly customers and the pharmacy. It is not possible to determine how they are calculated by the PBMs, and their contracts specifically state it is at their discretion. Even when we know that certain ratings are used to help determine*

*the fees the ratings are so complicated and not possible to fulfil. For example, the use of statins is heavily promoted as part of the ratings, however, when a physician has determined that a statin is NOT appropriate for a particular patient the PBM does not cancel that particular patient from the calculations, but it is used against the pharmacy when the pharmacy can do absolutely nothing about it. In fact, most of the ratings are based on what a physician will prescribe, and they rarely listen to pharmacists who contact them at the behest of a PBM and I don't blame them. They are trying to look out for their patients' well-being and the PBM is trying to maximize profits.*

2. *What is a DIR Fee? Why do they even exist? These are questions that most don't really know the answer to except a way to make money for someone. That someone has turned out to be the Pharmacy Benefit Managers (PBM) who have made billions over the years that DIR fees became a thing. DIR fees are imposed on pharmacies, the ones who are actually taking care of America's Medicare population. Why would a pharmacy be essentially billed for taking care of these individuals? And why would the Medicare patient also be asked to essentially pay for a percent of these fees as well?*

How are DIR fees impacting your small business? The process for submitting online comments regarding DIR fees and requesting that CMS further restrict what Medicare Part D Plan sponsors can and cannot do-- has been made very simple. Please submit your comments (story) by the March 7<sup>th</sup> deadline:

1. Click on [this link](#) and then the green bar at top left **SUBMIT A FORMAL COMMENT**
2. You can either type directly into the form or upload a letter that can be on your letterhead. You can also upload attachments that help tell the story.

Note that written Comments submitted to CMS are public. You can read the comments on this Rule that have already been submitted, reviewed by CMS, and posted [here](#). Some (most) are DIR-fee related while others are not.

### **About Those Ten Cent Provider Fee “Delinquent” Notices**

In our discussion with LDH Fiscal regarding the email some pharmacies received regarding delinquent .10 provider fee payments and assessment of \$35 late fee —some retroactive to 2020— a department representative noted that fee processing has been impacted both due to staffing shortages and system changes. As to late fee assessment, the policy states that payments are due on or before the 20<sup>th</sup> of the month following the quarter they are for. To avoid late fee assessment, payments should be mailed to LDH Fiscal in New Orleans in sufficient time to be received on or before the 20<sup>th</sup>.

### **End (of Public Health Emergency) Appears to Be in Sight**

As the COVID-19 fifth wave in Louisiana and nationally continues to dissipate, we are seeing signs that things may be returning to something closer to pre-pandemic “normal.” We have been operating under a public health emergency declaration for two years now but there is talk that when it expires in April, it could be extended for **less than** the 90- day extension period that has been practice. Several things to get on your radar screen regarding the end of the public health emergency:

- Medicaid eligibility for hundreds of thousands of Louisiana Medicaid enrollees will technically end the last day of the **month** that the public health emergency ends. I

- The extra 6.2% in federal dollars for Louisiana’s Medicaid Program will end on the last day of the **quarter** that the public health emergency ends.
- The PREP Act provisions such as certain liability protection and authorization allowing pharmacy technicians and interns to administer vaccines will end.
- Certain Medicare PBM practices waived during the public health emergency could resume.

It is important that your patients who are taking prescription drugs—many of them costly—successfully establish their continued enrollment in Medicaid if they remain eligible and are transitioned to a low-health plan such as the Exchange (Obamacare) if they are no longer eligible for Medicaid. LIPA is working on tools your pharmacy can use to help your patients understand what they may need to do to remain enrolled in Medicaid once the public health emergency ends.

### **Medicaid Provider Re-enrollment**

Now that the Louisiana Medicaid Provider Enrollment Portal is again available, we know from questions we got that many of you are aware of the need to complete your Medicaid re-enrollment and have been attempting to do so. Here are some of the provider-enrollment questions we received in the Pharmacy Business Practices *GroupMe* chat group this week:

*Do we have to complete an enrollment application personally for ourselves as a provider? For immunizations?*

**Yes, if you were enrolled as an individual provider with Louisiana Medicaid as of June 30, 2021.**

*If we applied and did all our paperwork prior to the system going down, do we need to apply again? Our paperwork says, “in process.”*

**LIPA has asked LDH for information on pharmacy providers that have fully completed the process in order to assist our members with compliance. In the meantime, Medicaid has indicated that providers can e-mail [louisianaprovenroll@gainwelltechnologies.com](mailto:louisianaprovenroll@gainwelltechnologies.com) to verify their re-enrollment is complete.**

*Do we need to fill out two separate Medicaid provider enrollments? One for MCOs and one for legacy Medicaid?*

**There is one Medicaid re-enrollment. Gainwell is managing that process for traditional Medicaid and the MCOs will receive and adopt the information.**

[Enrollment Instructions](#)  
[Provider Enrollment Portal FAQs](#)  
[Provider Enrollment Portal Documentation](#)

### **2022 Redistricting Session – PAR Recap**

The Louisiana Legislature wrapped up the 2022 Extraordinary Session on redistricting last week, passing maps for the U.S. House, State Senate, State House and more. For a detailed recap of their redistricting activities, please see the PAR Commentary below.

[PAR Redistricting Wrap Up](#)

The Public Affairs Research Council of Louisiana (PAR) is an independent voice, offering solutions to critical public issues in Louisiana through accurate, objective research and focusing public attention on those issues. PAR will release their 2022 guide to the Louisiana legislature in the coming weeks, and you will find a copy mailed to you when it is made available to us. Meanwhile, you can download the “PAR Guide” app, which is available on all apple and android devices.

Many of our members have reached out to their legislators to bring the issues they face as independent pharmacies to their attention. We are seeing more and more legislators take an interest in these issues, so we want to encourage all our pharmacies to not only contact their congressional delegation but their local legislators as well. You can find your legislators by clicking the button below.

[Find Your Legislator](#)

## **2022 Legislative Update**

The 2022 Regular Legislative Session will convene at 12:00 p.m. on Monday, March 14<sup>th</sup>. It must adjourn no later than 6:00 p.m. on Monday, June 6<sup>th</sup>. As we approach Mardi Gras, legislators are busy finalizing their bills before the pre-filing deadline next Friday, March 4<sup>th</sup>.

We expect many bills to be filed after Mardi Gras. As of now, two bills are particularly interesting. [Senate Bill 32](#) by Senator Mills provides relative to pharmacy audits. It attempts to clarify existing provisions around pharmacy audits, including audits for alleged fraud, willful misrepresentation, and abuse. It limits the period of time and number of prescriptions that may be audited. It also clarifies the steps an auditing entity must take with the Department of Insurance when it alleges fraud, willful misrepresentation, or abuse.

LIPA strongly supports this bill because of the countless stories we’ve heard from member pharmacies regarding audits that take dozens of hours and attempt to claw back tens of thousands of dollars years after the prescriptions were filled for a valid medical need. We look forward to supporting Senator Mills’ bill and we will provide additional information in the future. In the meantime, please share your stories about your recent audit experiences.

Another bill of interest is [House Bill 54](#) by Representatives Bagley and Frieman. This bill is in Title 14, the Louisiana Criminal Code, and would create the crime of discrimination based on vaccination status. It would forbid any person from inquiring about the COVID-19 vaccination status of someone trying to enter a building or premises and includes harsh penalties. Because of its relation to vaccines, LIPA will track HB54 and any other bills of a similar nature. We will keep you updated as they progress through the legislature.

## **NADAC Price File Watch –Publication Date 2.23.22**

The Louisiana Medicaid ingredient cost component of pharmacy reimbursement is based on the NADAC published price. This week’s NADAC report contains 21,581 drug price changes due to incorporation of the most recent monthly survey results. 111 of the drugs are brand and 21,470 are

generic drugs. Of the 21,581 changes 11,066 drugs increased in cost and 10,515 drugs decreased in cost in which 37 of the decreased drugs were brand name.

[Weekly NADAC Report](#)  
[NADAC by Percent Change](#)  
[NADAC by Price Change](#)

The National Average Drug Acquisition Cost (NADAC) is the average price paid by chain and independent pharmacies to acquire prescription covered outpatient drugs, as determined by a monthly survey conducted by Myers & Stauffer for CMS. While the nature of an average is that some are reimbursed above cost, and some are reimbursed below cost, our concerns with Myers & Stauffer's NADAC price is that we are seeing increasing gaps between NADAC prices and the actual cost our pharmacies must pay. By filing appeals to Myers and Stauffer we are hoping they will correct the reimbursement to a drug acquisition cost. Small business pharmacies should not be on the losing end of most every prescription filled.

Our LIPA staff will file NADAC appeals to Myers & Stauffer on your behalf. To do so, we need invoices for each drug and a spreadsheet of the drugs containing the information included on the Medicaid reimbursement form found [here](#). (*Excluding the "additional information" section*)

We have again attached the instructions for Pioneer users to create a memorized report to run weekly along with information on how to best pull and send invoices. Please send all NADAC drug pricing spreadsheets and invoice emails to [appeals@lipa.org](mailto:appeals@lipa.org). Once we have received both the invoice and drug information spreadsheet, we will submit appeals as quickly as possible.

[Pioneer System Instructions](#)

We are still working to develop report criteria for other software systems to help pull the report needed for LIPA to file your NADAC appeals. If you are a pharmacist who uses a system other than Pioneer and would be willing to work with us to develop the report spreadsheet, please email [appeals@lipa.org](mailto:appeals@lipa.org) with your name, your pharmacy's name, and which system you use.

While we work on these issues with NADAC reimbursement, we want to remind you that the Medicaid program publishes the preferred drug list. This list is applicable to fee-for-service Medicaid and each of the Medicaid managed care plans. We wanted to provide you with this link to the Preferred Drug List that the Louisiana Medicaid Program publishes so you can review and help your prescribers find the lowest cost alternative and appropriate drug therapy for your patients.

[Preferred Drug List](#)

Is Louisiana an outlier in that two Louisiana based wholesale drug distributors supply 82% of our members while a national price schedule may be predominant in 90% of the nation but only about 18% of Louisiana

### **PBMs Non-Compliant with MAC Appeal Requirement**

We have discovered after MAC appeals are denied, PBMs are not complying with [R.S. 22:1865 subsection D](#), which stipulates that PBMs must "provide the challenging pharmacy or pharmacist the NDC number of a drug product and source where it may be purchased for a price at or below the MAC from national or regional wholesalers operating in Louisiana." PBMs have not been advising pharmacies where these drugs can be purchased at lower costs as required but instead telling pharmacists to contact their wholesalers to find the prices. According to [R.S. 22:1961](#), violating this law is illegal, as it is deemed an unfair or deceptive act and complaints can be filed with the Louisiana Department of Insurance. We would note that based on our conversations

with LDI, if pharmacies do not file complaints, LDI assumes all is well and the law is being adhered to.

### COVID Vaccine News

The seemingly constant changes in CDC COVID-19 vaccine guidance continued with their [updated guidance](#) issued Tuesday that encourages some people-- especially males between the ages of 12 and 39 --to wait up to eight weeks after the first dose of Moderna or Pfizer vaccine to get a second dose. This is of course longer than the previous 28 days for Moderna and 21 days for Pfizer. Per the CDC website, “*a shorter interval (3 weeks for Pfizer-BioNTech; 4 weeks for Moderna) between the first and second doses remains the recommended interval for: people who are moderately to severely immunocompromised; adults ages 65 years and older; and others who need rapid protection due to increased concern about community transmission or risk of severe disease.*”

### Evusheld Dosing Has Changed

The FDA recently announced a [modification to the Emergency Use Authorization](#) for AstraZeneca’s COVID-19 therapeutic Evusheld. The modification involves a change to the dosing regimen. **Evusheld now should be administered as an initial dose of 600 mg. Individuals who already received the previously authorized initial 300 mg dose should receive a second Evusheld dose as soon as possible.** Recommendations will be made in the near future when more data are available to determine the appropriate timing of redosing (e.g., a repeat dose with 150 mg of tixagevimab and 150 mg of cilgavimab at 3 months or 6 months after the initial dose).

Providers are welcome to participate in a call hosted by the CDC on Monday –LIPA plans to dial in—to discuss this and new reporting requirements in further detail.

<b>Topic:</b>	COVID-19	Therapeutics	Update
Date/Time:	Monday, Feb 28	(2:00-3:00 pm	ET)
Dial-in			Information:

<https://hhsasproea.zoomgov.com/j/1617136697?pwd=VVhoSnl1TTVzOFZjcmFoaE15dVREQT09>  
Passcode: 327203  
Or iPhone one-tap:  
US: +16692545252, 1617136697# or +16468287666,1617136697#  
Or Telephone:  
Dial (for higher quality, dial a number based on your current location):  
US: +1 669 254 5252 or +1 646 828 7666 or +1 669 216 1590 or +1 551 285 1373 or 833 568 8864 (Toll Free)  
Webinar ID: 161 713 6697

In announcing the call, the CDC notes “Current utilization data available to us (as reported by state and territorial health departments and administration sites) notes the current utilization rate of Evusheld is approximately 20% nationally with orders of Evusheld also being low. We are focused on outreach efforts to help increase utilization across jurisdictions and make Evusheld more available to providers for use among eligible patients as another tool for protection against COVID-19. To support product access, we maintain a [public dashboard of jurisdiction-by-jurisdiction allocations](#) of Evusheld as well as an [online locator](#).”

### **Online Immunization Training for Pharmacists in March by ULM**

ULM will be offering virtually the APhA Pharmacy- Based Immunization Delivery course that meets the required training criteria of both the Louisiana Board of Pharmacy and PREP Act on the afternoons of March 8 and March 9. The sessions will be held from 1 PM to 5 PM and you will need to attend both sessions, but you will be able to do it online, with the “live” portion via Zoom. You can find all the details [here](#) but the deadline to register is March 4<sup>th</sup>.

### **Have You Joined LIPA’s Chat Groups for Members?**

LIPA hosts two different Chat Groups on the *GroupMe* smart phone application platform that we encourage members to join and participate in either or both. These chat groups were created to serve as a communication tool to facilitate rapid responses to your questions and for sharing with your peers. The two Chat Groups are:

1. **Pharmacy Business Practices** This is the newer of the two groups and the focus is the general business of independent pharmacy.
2. **LIPA COVID Vaccines/Therapeutics** The primary focus of this group is all things COVID-related including COVID vaccines, therapeutics, testing, and masks.

To join either group, simply send an e-mail to Danielle Hodge ([hodge@lipa.org](mailto:hodge@lipa.org)) with the name, pharmacy name and cell # of the person to be added. The *GroupMe* application can be downloaded from the Application Store.