

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....



Dates to Know:

TBD – Medicaid Reimbursement Advisory Committee Meeting

September 30 - Medicaid Provider Re-enrollment Deadline

October 12—PBM Monitoring Advisory Council Meeting

Fifth Circuit Court of Appeal “Punts” on Our Ten Cent Provider Fee Litigation Against ESI

Earlier this week, the U.S. Fifth Circuit Court of Appeals punted on our [lawsuit](#) against Express Scripts (“ESI”). LIPA sued ESI in Federal Court to determine whether Medicare Part D preempts the ten-cent provider fee ([La. R.S. 46:2665\(A\)\(1\)\(c\)-\(e\)](#)). LIPA won at the U.S. District Court, but on appeal, the 5th Circuit said the court lacked jurisdiction to hear the case without addressing the merits of our claim.

LIPA and ESI agreed on jurisdiction, but the Court independently concluded that it lacked subject matter jurisdiction by federal question or diversity. Although Part D preemption, a federal law, was the issue at trial, the Court held that it lacked federal question jurisdiction because Part D preemption was a defense, not the right to recovery, which was the Louisiana ten cent provider fee, a state law. Diversity jurisdiction requires the parties to be diverse in citizenship and for the amount in controversy to exceed \$75,000. LIPA and ESI are domiciled in different states, so diversity was met. However, the Court did not allow LIPA’s member pharmacies to aggregate their claims against ESI. Instead, the Court required at least one of LIPA’s members to individually satisfy the \$75,000 amount in controversy requirement, which was not a part of the record before the Court.

Although this case is dismissed for now, we are determining options, examining records, and encouraging LDH, LDI, and the state on additional paths forward and enforcement of existing laws and regulations. For instance, of the sixteen ESI pharmacies permitted in Louisiana, records indicate only five pay the Provider Fee, ultimately costing LDH significant revenue. It’s essential that all pharmacies in the state are treated, and regulated, equally, especially considering multiple agencies granting or extending contracts with ESI and other PBMs. We will provide additional details about paths forward as we continue to review the case.

What is the Minimum Time Providers Have to Respond to Correspondence?

Please check and save the envelopes for PBM communications, for example—Caremark is sending pharmacies re-credentialing notices. One we have seen is a “Second Notice” dated AUGUST 24, 2021, requiring logon and completion of the re-credentialing questionnaire by SEPTEMBER 15, 2021—the pharmacist keeping the envelope shows a postmark of JULY 12, 2022. That’s just last week and not a year

ago. This appears to be evidence of several PBM errors, incompetence and Unfair Trade Practices, and LIPA needs you and your information to help us build the case.

Save your envelopes from the PBMs showing the postmark dates. The problems are broad, and, while you may be aware we are working on prompt pay issues—where the remittance advice has one date, the check date or electronic deposit is another, now we must look and see when the check was mailed—15 days from the date of service is the required time for you to be paid—not mailed the payment but a check or deposit in your hands.

How PBM Negative Reimbursement Harms Both Patients & Pharmacies

We are continuing to see firsthand stories of how negative reimbursement blocks patients from accessing the drugs necessary to maintain their health. Just yesterday, a LIPA member shared this heartbreaking story:

"I have been wanting to post on this topic but wasn't sure how, but today I am so frustrated at what Pharmacy Benefit Managers (PBMs) are doing to my patients. Two of my patients need inhalers for COPD. Their plans reimburse me below my cost of medicine. For months we have been trying to absorb this loss in hopes it gets corrected, but we have had to start examining every claim. I offered to transfer these meds to another pharmacy, but they would have to go out of town, and this is a hardship for them so they will probably go without!

Businesses cannot stay open by selling things below cost. This is affecting patient care! Dr's offices are trying to help by changing meds but there is no inhaler that I can fill and even break even.

This is just an example of two patients today, but there are many more on a daily basis.

Thanks to all our loyal customers who stay with us despite having to transfer some of your prescriptions elsewhere! Y'all have been very understanding! Independent pharmacies are fighting this and hope for changes in the future. We want to continue to serve you in the future! If you have experienced hardship filling meds as I have described, please call your insurance commissioner! 1-800-259-5300 or you can file a complaint online www.ldi.la.gov"

We must continue to file complaints with the Department of Insurance to shed light on exactly how PBMs are short-changing pharmacies and patients all over Louisiana. Please send your complain information to legal@lipa.org and we will work with you to file a complaint with LDI.

Requests for Paxlovid?

With the continuing new positive COVID cases, pharmacies are seeing more prescriptions for the oral antiviral Paxlovid and have three options: 1) dispense with a prescription 2) prescribe and dispense or 3) make a referral to another pharmacy.

Enrolling as a Paxlovid Dispensing Pharmacy If you would like to dispense Paxlovid but are not yet set up to do so, the process is easy—no forms to complete! Pharmacies who have not yet enrolled to dispense Paxlovid can still do so by e-mailing Leah Michael, OPH Director of Pharmacy Services at leah.michael@la.gov. Please include pharmacy name, address, phone number and name of individual who will be primary contact and their phone number. Depending on whether you already have an HPOP account for receiving COVID vaccines, she will let you know whether your account needs to be activated and if so, send a link for you to do so.

Leah approves orders daily and Paxlovid is shipped from Amerisource Bergen. She indicated that pharmacies can expect to receive it within a couple of days of placing an order. As a reminder, there is currently no cost for Paxlovid ingredients, and you can expect to receive the payer's normal dispensing fee (which can be quite low) with some exceptions.

Prescribe as Well as Dispense Paxlovid State-licensed pharmacies can now **prescribe** as well as dispense Paxlovid in certain conditions, as of July 6 when the FDA revised the [Emergency Use Authorization](#) for Paxlovid. The reason for the change—which was opposed by the AMA—was to increase access to Paxlovid, an important COVID oral anti-viral that has been proven in clinical tests to majorly reduce hospitalization and death from COVID. Pharmacists who prescribe Paxlovid are expected to establish that it is not contra-indicated by the patient’s renal or hepatic function (many people now have medical records to establish this on their e-Phones in their electronic health record!) and document other drugs (prescription and non-prescription) that the patient *is taking* to check for drug-drug interactions. Here is the link to a concise [Guide to Managing Paxlovid Drug-Drug Interactions](#) from the University of Michigan that includes brand names for drugs and that you may find helpful. Note that the CDC’s definition of persons at increased risk for severe COVID is **very broad** and includes almost everyone.

If you are interested in prescribing Paxlovid, please let us know. We have developed a model Paxlovid consent form/eligibility screening form for use by pharmacist prescribers and you can view and download it [here](#). You can call or text Ruth Kennedy at 225-241.1437 or e-mail her at kennedy@lipa.org. LIPA believes that a special add-on payment is appropriate when Paxlovid is **prescribed** by the pharmacist for Medicaid enrollees, and we will be submitting a request for justification to LDH.

COVID Therapeutics Provider Locator Tool You can find locations nearest to you using the online [COVID Therapeutics Locator tool](#) that are reporting Paxlovid, Molnupirivir, or Evusheld in stock.

Medicare & Medicaid Will Reimburse Pharmacies for 8 COVID At- Home Test Kits Per Month

With July winding to a close, patients have just over one week left to get their allotment of free COVID home test kits for the month. August 1st, they will be able to get additional kits. Many patients are likely to be unaware that they are entitled to eight free at home COVID test kits **per month**. For Medicare, this is available through Medicare **Part B**, even if the person is enrolled in a Medicare Advantage Plan. A prescription is **not** necessary. If your pharmacist is providing or is interested in providing-- free test kits and billing Medicare Part B for them, you may find this [information on the CMS website](#) helpful. Medicare reimbursement is \$12 per test kit. From our cursory research, it looks like tests are available to purchase for half that or less. The time to stock up on COVID test kits is before one becomes infected with the virus!

Medicaid Provider Re-enrollment Deadline is Now September 30th!

LIPA expects to get updated Medicaid provider re-enrollment lists showing pharmacies and pharmacists enrolled as a “prescriber only: provider next week and will identify any of our member pharmacies that are showing as needing to take action to complete their Medicaid provider re-enrollment. While Louisiana Medicaid has extended the deadline for provider reenrollment until September 30th—and will not begin denying claims for non-compliance until December 31, 2022, our assessment is that independent pharmacies and the “prescriber only” certified immunizers in their employ are near 100% compliance. Some applications are still awaiting Gainwell review and it is possible they may identify issues (for example, signed by person not authorized, SSN is showing all zeros that will require follow up.)

Fair Medicaid Pharmacy Reimbursement is Critically Important

LIPA is looking forward to the initial meeting of the newly created Council on Medicaid Reimbursement that was created by Act 292 ([Senate Bill 83](#)) of the recent legislative session to discuss our experience and findings regarding NADAC as well as concerns about the 2021 La Medicaid Professional Dispensing Fee Survey. Appointees to the Council who have been named so far include Medicaid Director Tara LeBlanc, Kim Wixon (Cottonport Corner Drug) representing LPA, Nikki Hollier (Hollier’s Family Pharmacy) and Dana Antoon (Channell Drug Group) representing the Louisiana Board of Pharmacy, M.J. Terrebonne, former La Medicaid Pharmacy Director and current LIPA Team Member and Dr. Stewart Gordon, Louisiana Health Care Connections Medical Director, both representing the Chairman of Senate Health &

Welfare, Doug Boudreaux (Boudreaux's Compounding Pharmacy) representing the Chairman of House Health & Welfare and Randal Johnson, representing LIPA.

Based on feedback we get from our members, NADAC prices can be **below** your actual acquisition cost, and this should not be the case. The concept of NADAC is not necessarily a bad thing—the issue is the validity of the information being provided to the federal government by their contractor Myers & Stauffer. Myers & Stauffer is also the contractor that conducted the 2021 Professional Dispensing Fee Survey for LDH last fall and advised them of their findings that the average cost of dispensing prescription drugs has **decreased** by one cent in Louisiana since 2018. Our state has an outsized percentage of the population with Medicaid as their primary payer for healthcare and with the public health emergency continuing, enrollment is expected to continue to increase. LIPA continues to work with pharmacies to closely monitor the weekly NADAC pricing, gather data and submit requests for review (appeals) when acquisition cost is actually below the NADAC price.

Have You Sent Us Sent Us a Claim-Specific Example of Effective Rates Yet?

If you have not yet sent LIPA at least one claim -specific example where effective rates were used (dated after July 2019) please do so at the earliest opportunity. You can send the evidence to legal@lipa.org or by fax at (225) 308-2040, and we will file a complaint to LDI. By doing so we hope to show LDI a clear example of PBMs and PSAOs entering pharmacies into illegal contracts in Louisiana.

LIPA is willing and able to assist you in filing complaints with an appropriate regulatory or administrative body in any manner you like

In our experience, regulators, and entities responsible for enforcement take the position that “if it’s not documented, it didn’t happen.” On multiple occasions, the Insurance Commissioner or his staff have commented on the low level of actual complaints they have received regarding PBMs. We believe it is vital to demonstrate that non-compliance with state law is not just a “one off” that impacts a handful of pharmacies but is **systemic**. Please continue to send all complaints, along with any relevant documentation to legal@lipa.org, and we will file a complaint on your behalf to DOI. You can also call our office at (225) 308-2030 to get started on a complaint. It is important for us to work with you all to file complaints promptly in order to force adherence to the laws of Louisiana. The laws passed are not worth anything if we cannot get LDI and the Board of Pharmacy to enforce them.

Louisiana Medicaid Will Pay for COVID Vaccine Administration for Most Uninsured

Patients who are uninsured may be reluctant to complete the application for the Medicaid COVID Uninsured Group because they do not realize how simple the application actually is. No questions about other household members, income, or resources, it can be completed VERY quickly. The application should **not** be a barrier to someone getting enrolled. (In contrast, applications for Medicaid, SNAP and other benefits can be quite time consuming). Eligibility is very easy to establish, beginning with the completion of a [simplified application](#), including the three months before the application month, and is good until the public health emergency ends.

Louisiana Medicaid has a [COVID-19 program](#) that will pay for vaccine administration (as well as testing, treatment, and other services) if the primary diagnosis is COVID. The only people who are **not** eligible are those who are either undocumented, incarcerated or have other health insurance. There is no income or resource test.

People approved for this program will not receive a Medicaid ID card. Instead, the approval letter they receive is their proof of eligibility and contains the information you need for billing. Providers have the option of putting their address on the application form, and if they do so, they will receive a copy of the letter as well so that they know they can go ahead and submit a claim to Medicaid.

NADAC Price File Watch –Publication Date 7.20.22

The Louisiana Medicaid ingredient cost component of pharmacy reimbursement is based on the NADAC published price. This week's NADAC report contains --21,826 price changes due to the incorporation of the most recent monthly survey results. 82 of the drugs are brand and 21,744 are generic drugs. Of the **total** changes, 7,105 drugs increased in cost and 14,721 drugs decreased in cost.

[Weekly NADAC Report](#)

[7.20.22 NADAC Brand Drugs by Percent Change](#)

[7.20.22 NADAC Brand Drugs by Price Change](#)

[7.20.22 NADAC Generic Drugs by Percent Change](#)

[7.20.22 NADAC Generic Drugs by Price Change](#)

NADAC represents the national 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 concern 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 can bring to their attention—and the attention of other stakeholders—the discrepancy between the actual acquisition cost for Louisiana independent pharmacies and the national average.

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 attached instructions for Pioneer and Liberty users to create a 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. Once we have received both the invoice and drug information spreadsheet, we will submit appeals as quickly as possible.

[Pioneer System Instructions](#)

[Liberty 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 with your name, your pharmacy's name, and which system you use.