

NACDS President and CEO Steven C. Anderson

NACDS Pharmacy and Technology Conference

Monday, August 10, 2009

Thank you, Dennis. NACDS Chairman Andy Giancamilli said it great yesterday. The engagement of people like you keeps NACDS focused as a member-driven association. Your leadership means a lot to the success of NACDS in this Conference and in government affairs.

In fact, it may mean more than you even know. When any of you contact a member of Congress, or provide input on policy positions, or discuss industry trends here, you make a difference in that moment. But you also are part of a transformation of advocacy at NACDS.

We have heard a great deal over the past year about healthcare reform. Many on Capitol Hill are working hard to live up to the name of “reformers.”

In fact, I have come to think of NACDS members as a band of reformers. Reformers of this trade association. And reformers amid the current focus on improving healthcare – which of course I would like to discuss today. But first, the reform of NACDS.

Two years ago, I talked about the Duke of Wellington. One of his battlefield strategies was to “march to the sound of gunfire” – exactly what NACDS must do in the policy arena. Last year, I described Winston Churchill’s World War II call to “Deserve Victory.” His point – and mine – is that we cannot guarantee victory, only commit our all to achieve it.

I am here to tell you, that is what we are doing. And our progress over the past 29 months, directed with an ambitious 1,000 Day Plan to reform NACDS, stitches together like chapters in a book – telling the story of who we are today.

Just last month, National Public Radio published this photo on its website. It was taken at the June 17 meeting of the Senate Health, Education, Labor and Pensions Committee – a

markup where they write the legislation. NPR took pride in showing and naming those in the room – those influencing the legislation. I understand NPR's angle, but I was pleased that a member of the NACDS staff was front and center. We are exactly where we must be – participating on your behalf, and for patients who rely on pharmacy services nationwide.

But NACDS' proactive stance dates well before this year, and well before the elections.

You may recall that in November 2007, NACDS made a stamp on the presidential campaign. We published a letter to the candidates in *The Washington Post*, urging pharmacy as a solution for better healthcare.

This opened our campaign to promote pharmacies as the face of neighborhood healthcare. In February 2008, we began a series of ads in Washington, D.C. Our point is simple: pharmacy and healthcare go hand-in-hand.

Three months later, we released and promoted the NACDS Principles of Healthcare Reform. In one instance, we pitched them while moderating a discussion with advisors to now-President Obama and Senator McCain. Following the election, 12 pharmacy organizations spoke together and announced unified principles at a National Press Club event.

From time to time, NACDS members have testified before Congressional committees. Dennis, here is one of the occasions that you agreed to state NACDS' position – eloquently, I might add – before the House of Representatives Small Business Committee. Others have answered the call as well, such as NACDS-member Peter Wolfgram of Bungalow Drug, before the Senate Finance Committee.

Other times, it has been NACDS' expert staff – battling a track and trace mandate, and testifying on healthcare reform, before the House Energy and Commerce Subcommittee on Health.

And then there was a briefing on medication therapy management that we hosted on Capitol Hill with the National Community Pharmacists Association and the Iowa Pharmacy Association. Congressman Dave Loebsack of Iowa opened the doors of Congress to us. And Dr. LB Brown of the University of Tennessee touted MTM.

There are many other signs that our internal reforms have led to enhanced branding of pharmacy's role in healthcare delivery. For example, NACDS members were invited this year to participate in each of the regional White House forums on healthcare reform. NACDS staff have participated in the regular stakeholder meetings on reform created by the Senate Finance Committee and by the Senate Health, Education, Labor and Pensions Committee.

But perhaps one of our greatest accomplishments in telling the story of pharmacy came in June, with the first annual NACDS RxIMPACT Day on Capitol Hill. At last year's Pharmacy and Technology Conference, I described the political imperatives for NACDS to take advocacy to the next level. I said specifically that we need to enhance grassroots and bring white coats to the U.S. Capitol.

Shortly thereafter, we created a dedicated grassroots function at NACDS. And then we announced the NACDS RxIMPACT program, and RxIMPACT Day on Capitol Hill. We said all along that your faces, and your stories, embody pharmacy's role as the face of neighborhood healthcare. And many of you responded.

On that day in June, more than 150 pharmacy advocates from 30 states met with more than 180 Congressional offices, and with senior staff at the Department of Health and Human Services. These advocates included pharmacists, company representatives, pharmacy educators and students, and state pharmacy associations. Believe me, I understand that everyone has a

business to run. But I also can tell you it was mightily important to walk into those Congressional offices on that day.

We made a huge splash for pharmacy. CNN took notice, interviewing Mary Sammons of Rite-Aid, and filming pharmacists in the halls.

And we secured some key commitments. Congressman Mike Ross brought down the House at our opening event, when he said this: “As long as I have a seat at the table, pharmacy has a seat at the table!” Congressman Ross and his wife are former pharmacy owners. They know what pharmacy means for patient care. He is chairman of the Health Care Task Force of the Blue Dog Coalition, moderate Democrats exerting tremendous influence in reform.

After the dust settled on this event, we received important validation of its power. NACDS-member Pamida Pharmacy issued a news release about what it meant to the company.

Here are Pamida’s words, which speak clearly, powerfully, and convincingly. I quote.

“Our first trip to Capitol Hill for RxIMPACT Day was a huge success. Thanks to NACDS, pharmacy colleagues from across the nation were able to come together to promote important pharmacy healthcare reform in order to better serve our communities. Because of RxIMPACT Day we were able to educate Members of Congress on the value of community pharmacy in rural America and why key issues need to be addressed.”

End of quote. I venture to say that RxIMPACT Day on Capitol Hill will be a cornerstone of NACDS’ advocacy – forever.

If you missed it, you can still engage. The Day on Capitol Hill is vital, but it is just one part of RxIMPACT. You can write to Congress through NACDS.org. You can host elected officials for pharmacy tours. NACDS can help you train your staff in advocacy.

In fact, for those who were not able to come to Washington, we created a letter-writing campaign. In the first 24 hours, even while our white coats were taking to Capitol Hill, more than 1,700 letters were sent to Congress, and then 300 more followed.

You can be part of a similar effort at this Conference by visiting the cyber-stations in the exhibit hall and writing to Congress. And we are presenting an RxIMPACT educational session on Tuesday.

Do you see what I mean about examples of reform at NACDS? In our own way, we are marching toward the gunfire. And we are becoming more deserving of victory. If you have been part of this, thank you. And to future participants, we need you – please join us!

Our reforms of NACDS allow us to say this with confidence: NACDS has never been more proactive, or more aggressive, in advocating on behalf of our members. That is not just our conclusion, but that of outside observers. For the second consecutive year, NACDS has been listed among the top associations by *CEO Update* – which reports objectively on associations and nonprofits. In the July 17, 2009, edition of *CEO Update*, 42 associations received this designation. There are more than 7,600 national trade associations in the U.S. By *CEO Update*'s estimation, NACDS is in the top one-half of one-percent of national trade groups.

In the past two years, NACDS has received a similar honor from *Association Trends* newspaper. This is a credit to those in this room who have answered the call.

I also want to acknowledge our partnership with the National Community Pharmacists Association – NCPA – our brothers and sisters in reform. Bruce Roberts, who is executive vice president and CEO of NCPA, is with us today. I personally value the relationship forged in good faith between NACDS and NCPA. Last month, we celebrated the third anniversary of the Coalition for Community Pharmacy Action – comprised of NACDS and NCPA.

CCPA has been responsible for building common ground between NACDS – which includes regional chains with a minimum of four stores and national companies – and NCPA with its independent pharmacist membership. Thank you, Bruce, for your partnership.

So, what does all of this mean for the current healthcare reform debate?

Our objective all along has been to advance as many of the NACDS Principles of Healthcare Reform as possible. I commend the NACDS Board of Directors for its wisdom in approving these Principles 15 months ago. We began our work in healthcare reform before this debate began in the minds of many. We have looked at every day over the past two and a half years as an opportunity to reform healthcare, and to improve pharmacy's standing within it.

Think about last year – before there was a new Congress and a new President. NACDS and our allies achieved legislative victories that are really incremental reforms. For example, we delivered a delay in the Medicaid pharmacy reimbursement cuts ... gained prompt payment requirements for Medicare Part D claims ... froze retail co-payments in the military's TRICARE healthcare plans ... created incentives to spur adoption of e-prescribing in Medicare ... secured the allowance of electronic logbooks to track pseudoephedrine sales while still allowing paper systems ... and achieved an Internet pharmacy law that distinguishes between rogue websites and legitimate, state-licensed pharmacies.

I mentioned NACDS' advocacy on TRICARE issues, and we have late-breaking news in this area. Just last week, the Pentagon announced it will spend an estimated \$1.67 *billion* less than projected on prescription drugs in fiscal year 2010. This is due to a rule implemented this year that was advocated by NACDS. It enables the Defense Department to obtain pricing discounts for retail prescription medications. And helps military families and veterans maintain the ability to choose community pharmacies for prescriptions and pharmacy services. That is

reform. And that is a victory for servicemen and servicewomen, a victory for budgetary savings, and a victory for patient care in community pharmacy.

Our reformer mentality carried over into this year. So far, there have been two major legislative vehicles: the economic stimulus bill, and the pending healthcare reform effort.

Let me be clear about this. Although there are three healthcare reform bills working their way through Congress, NACDS has already been successful in enacting many of our Principles of Healthcare Reform. And we did that by fighting to have our provisions in the economic stimulus bill signed into law by President Obama.

The economic stimulus bill included provisions that delivered incremental reform. It included \$2 billion in grants and loans to advance health information technology. On a related point, NACDS had a tremendous fight on its hands to prevent so-called privacy policies that actually would have resulted in harmful unintended consequences. Though the new law brought about the most significant changes ever to the HIPAA privacy rules, we were successful in improving these policies dramatically.

For example, where there was a proposed ban on certain “sponsored” communications to patients, such as refill reminders, we were able to preserve pharmacies’ ability to provide this service for those medications that are currently being prescribed for the patient. We also improved provisions related to accounting for disclosures of patient information.

The stimulus bill also included a provision advocated strongly by NACDS – a temporary increase in federal funding for state Medicaid programs, totaling \$86.6 billion. Admittedly, state budgets remain disastrous. Increasing federal assistance was necessary to prevent additional cuts – but certainly was no cure-all. Our state association partners, and NACDS’ state government affairs and legal teams, are engaged in many Medicaid funding battles.

Finally, the stimulus bill also included tax relief related to depreciation of capital expenditures, which apply to NACDS members and other businesses alike.

Now, of course, Congress is in the thick of healthcare reform legislation. From the start, there has been uncertainty about whether any new law would be incremental, or revolutionary.

Regardless, our objective remains the same: to bring about as many of our Principles of Healthcare Reform as possible. As it has turned out, there are three key pharmacy issues very much in play. These include reforming Medicaid pharmacy reimbursement, expanding the availability of medication therapy management – or MTM, and exempting pharmacies that sell durable medical equipment – DME – from the redundant and access-threatening requirements of accreditation and surety bonds.

It is a major demonstration of our effectiveness, and a growing recognition of pharmacy as part of healthcare delivery, that provisions related to these issues are included in various healthcare reform bills as they now stand in Congress.

The bills by the Senate Health, Education, Labor and Pensions Committee, and the House Energy and Commerce Committee, both include grants for pharmacist-delivered MTM. The programs are part of collaborative chronic disease treatment. The Senate bill also would require health teams to support the availability of pharmacist-delivered MTM as part of the medical home pilot program. The House bill's medical home pilot would permit MTM for patients with multiple chronic diseases. And it allows services by non-physician practitioners.

Regarding DME, the House bill would waive the accreditation requirement for pharmacies for the purposes of supplying diabetic testing supplies, canes and crutches. It also would waive the surety bond requirement for pharmacies that have been enrolled for at least five years and never had an adverse action.

On the issue of Medicaid pharmacy reimbursement, the story is quite complex. I would like to focus on this for a few minutes, given the magnitude of the issue. On this issue, I must tell you candidly: the Deficit Reduction Act of 2005 – the DRA – remains a major catastrophe. This law was enacted before many of us joined NACDS and we have been tasked with attempting to fix it.

The DRA's Medicaid pharmacy reimbursement cuts, under the average manufacturer price model – or AMP, will reimburse pharmacies at below cost for many generic drugs. The regulations to implement these cuts have been written. But they remain blocked by two mammoth victories: a legislative delay secured last year, which I mentioned, and a Court injunction, which was secured through a lawsuit by NACDS and NCPA. May I remind everyone that for every day these cuts are not in effect, \$5.5 *million* in pharmacy cuts are prevented. From January 1, 2008, through September 30, 2009, \$3.5 *billion* in access-threatening cuts will have been avoided. But, throughout, we have emphasized the need for a long-term legislative solution – an against-the-odds, up-hill battle against the DRA.

In the healthcare reform debate, this is where we are. We have ensured that Medicaid AMP remains on the radar of Congressional leaders. It is tremendous that language related to Medicaid AMP has been included in the legislation. And much of the language is in the right direction and supported by NACDS. But – and I emphasize this – it is not enough.

The two main issues involve the definition of the pricing benchmark of AMP, and the method of calculating the federal upper limits – or F-U-L-s, which cap federal matches for state drug payments. In both regards, we have progress in improving on the flawed reimbursement system created by the DRA, yet a need for substantial improvement remains.

On the up side, the bill in the House of Representatives would define AMP in a way that more accurately approximates retail pharmacy's acquisition costs. The bill rightfully removes pharmacy benefit manager – PBM – rebates from the AMP definition, as these discounts are not available to retail pharmacies. However, sales of certain drugs to hospitals, physicians, and clinics remain part of the AMP definition. Clearly, these entities are not part of the retail class of trade, and inclusion of these sales skew the AMP benchmark downward.

On the issue of F-U-L-s, the legislation proposes using the weighted average AMP rather than the lowest AMP to set F-U-L-s. This is a much needed improvement that takes into account the wide range of market prices for generic drugs. But we remain extremely concerned – and that is Washington speak for absolutely alarmed – about the 130% multiplier in the legislation. That refers to the percentage of AMP at which F-U-L-s would be set.

Keeping in mind dispensing fees that reimburse pharmacies well below their costs to dispense, this multiplier will result in insufficient reimbursement to pharmacies for dispensing generic drugs in the Medicaid program. In the last Congress, NACDS supported legislation sponsored by Representative Frank Pallone, chairman of the House Health Subcommittee, and Senator Max Baucus, chairman of the Senate Finance Committee, which proposed a multiplier of 300% of weighted average AMP.

Unfortunately for pharmacy, the enactment of the Deficit Reduction Act of 2005 was much like contracting a yet-incurable disease. We have to fight not only the policy of the Deficit Reduction Act, but also the flawed perception that it has created. Even though we have blocked the DRA temporarily, it continues to bite pharmacy.

For example, some in Congress have told NACDS that the 130% multiplier is good for pharmacy in that it restores \$3 billion over 10 years. They emphasize this comes amid cuts to

other providers. But their evaluation is compared with the flawed and fatal levels set by the DRA. Every day, we are reminded that the DRA is a dragon that has yet to be slain.

Where does that leave us? We have no choice but to embrace our role as true reformers.

Remember, among our objectives is remedying the Medicaid AMP issue. Healthcare reform is one possible strategy toward that objective. In recent months and years, we have been successful in battling the Medicaid AMP rule in the Courts. And we have delayed implementation of the Medicaid AMP rule through legislation. Nobody knows for sure what, if any, healthcare reform measures will be enacted this year, or next. Equally uncertain is what the AMP provisions in any such legislation will look like, despite our best efforts.

But I will tell you this. We will keep fighting. With your stories. With data. With third-party support. Through the media. With tactical expertise. With everything we have. The way our democratic process works, we do not write the legislation. The way our democratic process works, elected officials will need to make their decisions based on our arguments, when balanced against those of others, and pressures such as the cost of healthcare reform. Whatever the outcome of any specific legislation, our objective will remain the same. Just as we have over the past two years, we will utilize every legislative, regulatory, legal and media strategy in the pursuit of good policy. For pharmacy and the patients they serve, this battle will continue for a long, long time.

And it is worth noting that NACDS is engaged in another issue that is closely related to pharmacy viability and pharmacy access. It is the ongoing litigation related to the First DataBank/Medi-Span settlements that reduce average wholesale prices – A-W-P-s – for drugs. NACDS and a coalition of several allied associations and pharmacies are appealing the settlements recently approved by a federal Court. As a result of our efforts in court, we were

able to postpone the AWP reductions for three years. We continue to work hard to convince the courts to halt the AWP reductions currently scheduled for September 26th. And our work on this issue also involves extensive state government affairs work. States need to know the damaging effects of Medicaid pharmacy reimbursement cuts, as a result of the A-W-P reductions. This is another example of how improving health policy goes far beyond the legislation that officially bears the name of healthcare reform.

I once heard reformers described as those who are willing to float through a sewer in a glass-bottomed boat. I will go a step further – reformers often do not have the luxury of a boat.

But while the process may be unsavory, and sometimes seem unworkable, that is exactly when we must remind ourselves of what we are fighting for. For a profession whose strengths must be leveraged. For better quality in patient care. For a more cost-effective and strategic delivery system. All we can do is ensure we are worthy of our task.

You may have heard the saying, “we can’t change the world until we change ourselves.” That has unique meaning for NACDS. We are a different organization than we were two years ago. Not that NACDS is perfect now. Like external reform, internal reform is a constant process. And there are others who are pretty good at advocacy, too, and who have been at this for a long time. But the Board of Directors and I are not content with getting better, or even being good. Greatness is the goal, as measured by even more victories on your behalf.

Much of the improvement we have experienced emanates from you. From your voices. From your perspectives and experiences. And from your willingness to share them with the decision-makers.

We appreciate your engagement, and thank you in advance for all you will do – and all we must do – in the future. Reform is not a destination, but a journey. Together, it will be a successful one at that. Thank you.