June 8, 2018

[Submitted electronically to wmelofchik@ncoil.org]

Attn: Will Melofchik, NCOIL Legislative Director
State Assem. Kevin Cahill, NY, Chair
Health, Long-Term Care & Health Retirement Issues Committee
The National Council of Insurance Legislators (NCOIL)
Atlantic Corporate Center
2317 Route 34 Suite 2B
Manasquan, NJ 08736

RE: APhA Support Letter for the Pharmacy Benefits Manager Licensure and Regulation Model Act, Sponsor Senator Jason Rapert (Arkansas), Discussion Draft as of May 8, 2018

Dear Assem. Cahill:

As the national representative and advocate of the pharmacy profession, the American Pharmacists Association (APhA) writes to provide support for the development of the Pharmacy Benefits Manager Licensure and Regulation Model Act (the "Act") sponsored by The National Council of Insurance Legislators (NCOIL) current President and Arkansas State Senator Jason Rapert. This legislation would provide fairness in the marketplace by allowing the state insurance commissioner to establish rules regarding licensing, fees and other standards for pharmacy benefit managers (PBMs).

APhA, founded in 1852 as the American Pharmaceutical Association, represents 62,000 pharmacists, pharmaceutical scientists, student pharmacists, pharmacy technicians, and others interested in improving medication use and advancing patient care. APhA members provide care in all practice settings, including community pharmacies, physicians' offices, hospitals, long-term care facilities, community health centers, managed care organizations, hospice settings and the uniformed services.

The Act coincides with a number of regulatory activities at the federal level from the Centers for Medicare and Medicaid Services (CMS) to limit PBM efforts to restrict pharmacies' access to Part D networks and increase transparency including protecting any willing pharmacy provisions, prohibiting onerous pharmacy accreditation and credentialing requirements that go beyond state laws, improving timelines for terms and conditions,[1] and prohibiting PBM "gag clauses".[2]

[1] *See*, CMS. Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program. Final Rule. 83 FR 16440. April 16, 2018. Available at: https://www.federalregister.gov/documents/2018/04/16/2018-07179/medicare-program-contract-year-2019-policy-and-technical-changes-to-the-medicare-advantage-medicare

[2] *See,* Verma. Seema. CMS. Letter to All Part D Sponsors. Subject: Unacceptable Pharmacy Gag Clauses. May 17, 2018. Available at: https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/Other-Content-Types/2018-05-17.pdf

Patients are negatively impacted by insurer and PBM practices such as "claw backs", and "gag clauses" that mask the real price of medications, increase the price patients pay, and interfere with pharmacists' ability to provide patient care. A recent study by the University of Southern California Schaeffer Center for Health Policy & Economics found that these practices forced customers to overpay for their prescriptions 23 percent of the time, with an average overpayment of $7.69 on those transactions.[3] These practices are also dramatically impacting pharmacies, many of which are small businesses. Retroactive fees or claw back mechanisms, often assessed weeks or even months after a prescription has been filled, prevent pharmacies from knowing at the time of dispensing what their true reimbursement will be for a prescription and result in a final reimbursement that has no relationship to what the pharmacy actually paid for the product. Such procedures are impacting the sustainability of pharmacies and accordingly, patients' access to care. Additionally, some PBM practices drive a wedge between pharmacists and patients because the incentives drive patients into narrow networks which adversely affect care continuity and force the patient away from a trusted health care provider who has knowledge about the patients' past medical and medication history. Complex PBM coverage and payment policies hinder the full potential of community pharmacists' clinical education and training from being realized as much of their day is spent on addressing coverage issues instead of providing care. Administrative inefficiencies and burdens placed on practitioners interferes with the ability of pharmacists and other practitioners to provide sufficient time and attention to patients.

APhA supports recent efforts by federal and state policy makers to prohibit these types of practices to allow better transparency regarding the cost of medications, allow patients to make more informed decisions, and permit pharmacists to know their actual reimbursement for a product at the point-of-sale. For years pharmacists have been frustrated by policies restricting their ability to help their patients who they know are struggling with high co-payments. However, in order to get the greatest benefit from medications, patients must understand how to use their medications safely and effectively. Unfortunately, many insurer policies prevent patients from receiving pharmacist-provided services to optimize safe and appropriate medication use and the impact of their medications. APhA emphasizes the need for public and private payers to cover pharmacist-provided services to optimize safe and appropriate medication use and the impact of medications on patients.

APhA appreciates the Committee's consideration of this important issue and hopes NCOIL will adopt the Act. If you have any questions or require additional information, please contact Michael Baxter, Director of Regulatory Affairs, at mbaxter@aphanet.org or by phone at (202) 429-7538.

Sincerely,

Stacie J. Maass

Stacie Maass, BSPharm, JD
Senior Vice President, Pharmacy Practice and Government Affairs

[3] Van Nuys, Karen, PhD. Et. al. OVERPAYING FOR PRESCRIPTION DRUGS: THE COPAY CLAWBACK PHENOMENON. USC Schaeffer Center for Health Policy and Economics. March 2018. Available at: http://healthpolicy.usc.edu/documents/2018.03_Overpaying%20for%20Prescription%20Drugs_White%20Paper_v.1.pdf

cc: State Senator Jason Rapert (Arkansas), President, NCOIL
Mr. Thomas B. Considine, CEO, NCOIL