Arkansas Pharmacists Association

The National Council of Insurance Legislators
Assemblyman Kevin Cahill
Chairman, Health Subcommittee
2317 Route 34, Suite 2B
Manasquan, NJ 08736

June 6, 2018

Dear Chairman Cahill and NCOIL Health Subcommittee Members,

The purpose of this letter is to provide written support for the development of the Pharmacy Benefits Manager Licensure and Regulation Model Act sponsored by the current NCOIL President and Arkansas Senator Jason Rapert. In March of 2018, Arkansas passed similar legislation, Act 3 of 2018, the Arkansas Pharmacy Benefits Manager Licensure Act. This law places a referee on the playing field to establish fairness in the marketplace by allowing the state insurance commissioner to establish rules regarding licensing, fees and other standards for pharmacy benefit managers (PBMs).

We look forward to hearing the discussion, reading the comments from stakeholders and are willing to provide information from the Arkansas experience on why such model legislation is critical to ensure safe and effective medication use in America. We applaud your efforts to consider model pharmacy benefit manager legislation to promote, preserve, and protect the public health, safety, and welfare through (1) effective regulation and licensure of pharmacy benefits managers; (2) provide for powers and duties of the Insurance Commissioner, the State Insurance Department; and (3) prescribe penalties and fines for violations of this Act.

**Why is this type of model legislation supported in Arkansas and needed in all states?**

Prior to the Arkansas Pharmacy Benefits Manager Licensure Act in 2018, Arkansas like many other states had attempted to pass laws regulating unfair business practices by pharmacy benefit managers as the issues arose. Disappointingly, these laws were not comprehensive, were handled by multiple different state agencies, were difficult to enforce and were not effective in ensuring a properly functioning marketplace.

The community pharmacy marketplace in Arkansas was severely broken in early 2018. Patients in underserved areas were often turned away at the pharmacy because of unannounced and unjustified below cost drug manipulation by pharmacy benefit managers in both government funded Medicaid expansion plans and commercial insurance plans. Furthermore, when pharmacies challenged these rates with appeals, the appeals were mostly ignored by the responsible pharmacy benefit managers despite existing state laws that required their cooperation. The Arkansas Pharmacists Association was also able to collect data from pharmacists and patient explanation of benefit statements from the insurance carriers and subcontracted PBMs that revealed possible Deceptive Trade Practices violations in Arkansas. One especially disturbing finding was that across 267 unique claims, including all top 200

most commonly prescribed drugs, CVS Caremark in commercial private insurance was acting in an anticompetitive fashion and reimbursing itself (CVS retail pharmacies) $63 more per prescription than contracted independent pharmacies in Arkansas. In addition, both OptumRx and CVS Caremark were using benefit design that utilized spread pricing in state government funded health insurance plans. The PBMs would pay the pharmacy a very low amount and then report to the insurance carrier and patient (patient explanation of benefits) a much higher amount paid to the pharmacy.

The concerns and written complaints from Arkansas pharmacists led to Arkansas Attorney General Leslie Rutledge announcing on Thursday, Feb. 8, 2018, that she would investigate complaints about reimbursement rates between pharmacy benefits manager, CVS Caremark, and Arkansas pharmacies. Investigators and attorneys for the AG's office have requested information pertinent to establishing if the reimbursement rate change triggers provisions of Arkansas' Deceptive Trade Practices Act.

While pharmacists work to improve the health of their patients and better their communities, pharmacy benefit managers squeeze as much money from pharmacists and patients to line their pockets. As critical pharmacies are squeezed out and closed, patients are ultimately harmed, especially in rural communities that have far fewer healthcare professionals. The community pharmacy health care marketplace in America has failed and the market is broken. Patients, purchasers and pharmacists are looking to state and federal leaders to create legislation and rules that ensure a fair playing field and healthy marketplace that delivers value and improved patient outcomes, rather than one that is anticompetitive, more expensive and is exploited for profit by unregulated middlemen pharmacy benefit managers.

Respectfully,

Scott Pace, Pharm.D., J.D.
Executive Vice President & CEO