AMA
AMERICAN MEDICAL ASSOCIATION

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July 12, 2018

The Honorable Kevin Cahill
Chair
Health, Long-Term Care & Health Retirement Issues Committee
National Council of Insurance Legislators
NCOIL National Office
2317 Route 34, Suite 2B
Manasquan, NJ 08736

Dear Chairman Cahill:

On behalf of the American Medical Association (AMA) and its physician and student members, I write to state our support for the current draft of the National Council of Insurance Legislators' (NCOIL's) Pharmacy Benefits Managers Licensure and Regulation Model Act (Draft Model Act) being considered by the Health, Long-Term Care & Health Retirement Issues Committee (Committee).

The AMA supports the Draft Model Act's provisions to require licensure of pharmacy benefit managers (PBMs) in the state and allow for oversight by the department of insurance or other equivalent regulator agency. The scope of PBMs' work has significantly expanded over the last decade, however, with their "benefit management" now largely resembling the typical role of insurers, including creating formularies, making coverage decisions, and determining medical necessity using utilization management tools. As such, we feel that departments of insurance should have direct regulatory authority over PBMs.

Furthermore, we suggest that insurance commissioners adopt rules under Section 9 of the Draft Model Act in accordance with this legislation and believe you have identified many of the PBM practices that such regulations should address. We are very pleased to see that the committee has identified the role that PBMs are inappropriately playing in clinical decision-marking (Section 9(a)(2)(I)), and the AMA supports the corresponding drafting note that encourages states to consider the legal implications of PBMs substituting their own clinical judgement for that of a prescribing physician in the context of utilization management requirements, such as step therapy.

The AMA strongly supports provisions in the Draft Model Act to ensure an adequate network of pharmacies. Adequate pharmacy networks are critical to ensuring patient access and adherence. Furthermore, we believe that by preventing mail order pharmacies from "counting" toward the network adequacy requirements, this Draft Model Act is ensuring that patients who want and need that touchpoint at the pharmacy are able to get it, and that pharmacists can continue to serve as important resources to patients.

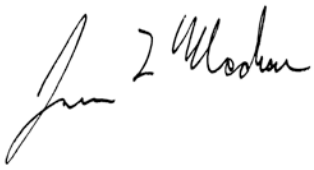
Additionally, the AMA supports language in the Draft Model Act that prevents provisions in PBM-pharmacist contracts restricting pharmacists' communications with patients regarding costs and access. Pharmacists serve as a critical source of information for patients to discuss their coverage and costs, and preventing such conversations from taking place is only increasing drugs costs to patients.

As you move toward consideration of this model bill, we would urge the Committee to include in the Draft Model Act a requirement that all PBMs, including those engaged by self-insured plans, be subject to the rules and requirements of this act. We also ask that the committee consider addressing the conflicts of interest that often occur among the pharmacy and therapeutics committee (P&T committee) members.

Finally, the AMA frequently hears from members about the hardships on patients that results from constant mid-year formulary changes—whether those changes be removing pharmaceutical from a formulary, moving them among the cost-sharing tiers of a formulary, or putting other utilization management restrictions in place. The system of rebates and the lack of transparency that makes up the PBM business model lead to these disruptions that have direct and consequential effects on patient care. When patients, especially those with chronic conditions, choose their health plan and carefully examine the formulary before purchasing to ensure the plan has the coverage and benefits and cost sharing that meets their needs, they should be assured that their choices will be honored throughout the plan year. When PBMs make changes in the middle of the plan year, patients may be forced into a medication regimen that has negative consequences—both medical and financial. These changes occur often with no warning and little regard for continuity of care. Therefore, we urge you to restrict mid-year formulary changes under the Draft Model Act to protect patients and ensure value for their premiums paid.

The AMA is grateful to the Committee for addressing these critical issues through its draft model legislation. We look forward to working with you on adoption of the Draft Model Act and enactment of this model in state legislatures. Please contact Emily Carroll, Senior Legislative Attorney, at (312) 464-4967 or emily.carroll@ama-assn.org, or Daniel Blaney-Koen, Senior Legislative Attorney, (312) 464-4954 or daniel.blaney-koen@ama-assn.org, if you have any questions or comments.

Sincerely,



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