



November 30, 2018

Senator Jason Rapert
President
National Council of Insurance Legislators
P.O. Box 10388
Conway, AR 72034

**RE: NCOIL Pharmacy Benefits Manager Licensure and Regulation Model Act –
November 6, 2018 Version**

Dear President Rapert:

I am writing on behalf of America's Health Insurance Plans (AHIP) to provide comments on the National Council of Insurance Legislators' (NCOIL) Pharmacy Benefits Manager Licensure and Regulation Model Act ("Model"). AHIP is the national association whose members provide coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation.

AHIP continues to believe that the October 15 version of the proposed Model is a substantial improvement from the original proposal and reflects the "chassis" approach endorsed by many stakeholders. However, the November 6 version, with new, previously undebated drafting notes, raises several concerns for our members. We oppose the drafting notes for the following reasons:

- The October streamlined version represents the closest to a true "chassis" model;
- The new drafting notes reintroduce issues previously eliminated by the sponsor, such as compensation and disclosure of sensitive information;
- The drafting note establishing NCOIL as the arbiter to render reimbursement decisions between pharmacists and PBMs is ill-advised and has not been appropriately discussed by all stakeholders, including members of the Health, Long-Term Care and Health Retirement Issues Committee ("Committee");
- The new drafting notes provide regulators with expansive authority to promulgate rules, as well as a series of specific issues for rulemaking. This includes topics neither previously discussed nor appropriately considered by the Committee;
- The November proposal provides broad authority to investigate and audit PBMs, without the appropriate and necessary guardrails in place; and

- As opposed to a new drafting note in Section 5 related to the federal law on gag clauses, the federal language should be adopted for this Model and replace the existing language in this section for consistency purposes.

Over the last six months of drafting and revising the proposed Model, we have stressed the importance of the PBM/health plan relationship. Health plans value the services that PBMs provide to consumers, employers, unions, trusts, and many other organizations, in order to manage increasingly complex and costly prescription drug benefits. As such, health plans privately contract with PBMs to process claims, negotiate discounts with drug manufacturers, advise on formularies, and otherwise support the management of the drug benefit.

The stated goal throughout the deliberative process was adoption of a “chassis” or “referee” approach that provides state regulators with the authority needed to oversee PBMs *when necessary*. The October 15 version of the proposed Model was an important step toward achieving this goal and we believe that discussions should return to the decision to pursue a more streamlined approach that eliminates many of the most troubling provisions from the original proposal. It is also important to note that the November version of the Model contains both language that was previously rejected and language that was never exposed to stakeholder discussion, leaving insufficient time to debate proposals of this magnitude. To reintroduce previously deleted language at this date, without a clear directive from the Committee to do so, does not reflect the deliberations up to this point.

AHIP appreciates the opportunity to engage in this dialogue. We believe that ongoing conversations and careful consideration of changes to the Model are paramount if NCOIL seeks to ensure an efficient and responsible regulatory structure while avoiding unnecessary, duplicative, and overly broad proposals that increase costs for consumers and employers. We are concerned about the proposed changes and encourage NCOIL to reject the November draft and retain the October 15 proposal for discussions by the Committee and stakeholders.

We encourage NCOIL to adhere to the deliberative process and ensure that any Model reflects the collective agreement of the Committee members and engaged interested parties. We look forward to our continued work together. If you have any questions or would like to discuss the matter further, please do not hesitate to contact me at (202) 861-6365 or Lgassaway@ahip.org.

Sincerely,

A handwritten signature in black ink that reads "Leanne Gassaway". The signature is written in a cursive, flowing style.

Leanne Gassaway
Senior Vice President, State Affairs and Policy

Cc: Members of the NCOIL Health, LTC and Health Retirement Issues Committee
Members of the NCOIL Executive Committee
Tom Considine, NCOIL Executive Director