



December 6, 2018

The Hon. Kevin Cahill
Chairman - NCOIL Health, Long Term Care and Health Retirement Issues Committee

Senator Jason Rapert
President - NCOIL

Delivered via email to William Melofchik at wmelofchik@ncoil.org

Re: Proposed Amendments to the NCOIL Proposed Pharmacy Benefits Manager Licensure and Regulation Model Act

Dear Chairman Cahill & Senator Rapert:

On behalf of PCMA I want to thank you again for your willingness to accept comments on the amendments under consideration to the proposed Pharmacy Benefits Manager Licensure and Regulation Model Act. We truly appreciate the deliberative process under your leadership. We know each of you, along with the NCOIL staff, have dedicated a great deal of time and effort understanding the many facets of this issue. While many of our initial concerns were addressed in the October 15th version of the Proposed Model that was considered by the October 25th meeting of the Health, Long Term Care and Health Retirement Issues Committee, there are some outstanding issues primarily with provisions that have been added. The October 25th Committee version more closely resembled the “chassis” model that I believe has been the goal throughout this process. The draft that was released with the 30 day materials contains issues that were not considered by the committee and some that have not been fully vetted by the stakeholders. The Pharmaceutical Care Management Association (“PCMA”) respectfully submits the following comments.

PCMA is the national trade association representing America's pharmacy benefit managers (“PBMs”), which administer prescription drug plans for more than 266 million Americans with health coverage provided through Fortune 500 employers, health insurance plans, labor unions, state employee and retiree plans, and Medicare Part D plans.

First, PCMA respectfully opposes the addition of Section 9, the Independent Dispute Resolution Section. This section has not been previously vetted and does not take into consideration the unique nature of pharmacy claims. This issue should not be included in a model act without further study.

Second, we have grave concerns with the drafting note in Section 7. The drafting note would allow the department of insurance to regulate compensation, network adequacy, MLR, etc. This is too broad and should not be included in the final version of the PBM Model Act.

Third, in Section 6 of the Proposed Amendments in (b) we suggest you clarify the language by simply adding the word “relevant” before books and records”. We also suggest that you consider adding an NCOIL drafting note that suggests the state reference their specific insurance code. Please see the attached appendix for specific language.

Finally, the Proposed Amendments to the Model Act contains gag order language in Section 5. PCMA continues to support the patient paying the lowest available price at the counter and we have worked in

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several states on gag order language that supports a patient's access to this information. Most recently, PCMA worked collaboratively with various parties at the federal level and supported the gag order language from the recently enacted U.S. S 2554 which adds SEC.2729 to Subpart II of Part A of Title XXVII of the Public Health Service Act. We appreciate the acknowledgment of the federal statute in the drafting note but we believe it is important for consistency that a model act should only reflect the current federal statutes.

Our members recognize that this proposed model act is a framework for states to consider and as such should only reflect the "chassis" components and leave the rest to the individual states to consider. Therefore, we must oppose the above mentioned additions that were included in the 30 day materials.

We appreciate your dedication to this important process and look forward to a continued dialogue on this critical issue at NCOIL and in the various states.

Sincerely,

A handwritten signature in black ink, appearing to read "Melodie Shrader". The signature is fluid and cursive, written over a light gray background.

Senior Director – State Affairs
Melodie Shrader

c.c. Members of the NCOIL Health, Long Term Care and Health Retirement Issues Committee



APPENDIX

Proposed Clean-Up Language For Section 4

Section 4. License to do business – ~~Annual statement~~ **Assessment**

(a) (1) A person or organization shall not ~~establish act as~~ or operate as a pharmacy benefits manager in this State for health benefit plans without obtaining a license from the Insurance Commissioner under this Act **and consistent with this act.**

(2) The commissioner shall prescribe the application for a license to operate in this State as a pharmacy benefits manager and may charge application fees and renewal fees as established by rule **and consistent with this act.**

(b) (1) The commissioner shall issue rules establishing the licensing, fees, application, ~~financial standards, and reporting~~ **and other** requirements of pharmacy benefits managers under this Act and ~~not inconsistent herewith.~~ **and consistent with this act.**