

October 28, 2020

The Honorable TK Keen
Chair, Pharmacy Benefit Manager Regulatory Issues (B) Subgroup
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC 20001

RE: EXAMPLES OF STATE PBM PROVISIONS TO INCLUDE IN SECTION 8 DRAFTING NOTE

Dear Chair Keen:

I am writing on behalf of the National Community Pharmacists Association to recommend additional examples of state PBM provisions to include in the Section 8 Drafting Note of the “[State] Pharmacy Benefit Manager Licensure and Regulation Model Act.” The examples provided below have helped the respective states address PBM practices and conflicts of interests that raise costs and threaten patient access to community pharmacy services, and I ask the Subgroup to amend the model bill to include the following citations.

- (1) PBM network adequacy ([Ark. Code 23-92-505](#), [Okla. Stat. 36-6961](#); see provisions in the *Health Carrier Prescription Drug Benefit Management Model Act* (#22))

Ark. Code 23-92-505. This provision establishes network adequacy standards that require a PBM to provide “a reasonably adequate and accessible pharmacy benefits manager network.”

Okla. Stat. 36-6961. This provision establishes network adequacy standards that account for the different access issues in urban, suburban, and rural areas.

- (2) Prohibited market conduct practices ([Ark. Code 23-92-506](#), [N.M. Stat. 59A-61-5 and 59A-61-7](#), South Carolina Code §38-71-2230(A)(1), MD. ANN. CODE §15-1642, and Oregon Rev. Stat. §§ 735.534 through 735.552).

Ark. Code 23-92-506 and **N.M. Stat. 59A-61-5 and -7.** These provisions address multiple PBM practices that limit patient choice and cut off patient access to pharmacy services.

- (6) Compensation ([Ark. Code 23-92-506\(b\)\(5\)\(A\)](#), N.J.S.A. 17B:27F-8 (New Jersey));

Ark. Code 23-92-506(b)(5)(A). This provision requires ingredient cost reimbursement amounts to be based on an objective, evidence-based benchmark, known as the National Average Drug Acquisition Cost (NADAC).

- (9) Affiliate information-sharing ([Ga. Code 26-4-119 and 33-64-11\(a\)\(8\)](#));

Ga. Code 26-4-119 and 33-64-11(a)(8). These provisions establish patient protections regarding the sharing of patient data between a PBM and its affiliated pharmacies for a “commercial purpose.”

- (11) Reimbursement lists or payment methodology used by PBMs ([Ark. Code 17-92-507](#), Kansas Rev Stat §§ 40-3829 - 40-3830, 24-A Maine Rev. Stat. Ann. Chapter 56-C, Colo. Rev Stat. § 25-37-103.5, MD. ANN. CODE

§15-1628.1 and §15-1628.2, [N.J.S.A. 17B:27F-2 \(New Jersey\)](#), and Oregon Rev. Stat. §735.534 and §735.536);

Ark. Code 17-92-507 and **N.J.S.A. 17B:27F-2 (New Jersey)**. These provisions recognize that PBMs use multiple reimbursement methodologies and ensure that state reimbursement regulations apply to all reimbursement methodologies.

- (12) Prohibiting clawbacks (Ala. Code § 27-45A-5, MD. ANN. CODE §15-1628.3, [Minn. Stat. 62W.13](#), N.J.S.A. 17B:27-7 (New Jersey), and Oregon Rev. Stat. §735.534);

Minn. Stat. 62W.13. This provision prohibits a PBM from retroactively clawing back a pharmacy reimbursement unless the clawback is done pursuant to a pharmacy audit or the claim was paid in error.

- (13) Affiliate compensation (Colo. Rev. Stat. § 10-16-122.3, [Ga. Code 26-4-119 and 33-64-11\(a\)\(7\)](#));

Ga. Code 26-4-119 and 33-64-11(a)(7). These provisions address reimbursements from a PBM to an affiliated pharmacy in situations in which the PBM steered the patient to the affiliated pharmacy.

- (14) Prohibiting spread pricing (LA. REV. STAT. ANN § 22:1867, [Va. Code 38.2-3467\(D\)](#));

Va. Code 38.2-3467(D). This provision prohibits a PBM from conducting spread pricing.

Thank you for the opportunity to provide these recommendations. If you have any questions about the information provided in this letter, please contact me at (703) 600-1186 or matthew.magner@ncpa.org.

Sincerely,



Matthew Magner, JD
Director, State Government Affairs