

September 30, 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: RESPONSE TO REQUEST FOR RECOMMENDATIONS REGARDING “GAG CLAUSE” PROVISION  
PROTECTING PHARMACISTS’ RIGHT TO DISCUSS PBM ISSUES WITH POLICYMAKERS**

Dear Chair Keen:

The National Community Pharmacists Association appreciates the opportunity to respond to the request for recommendations on the proposed “[State] Pharmacy Benefit Manager Licensure and Regulation Model Act” (“Draft”), specifically the provision that would prohibit a PBM from using “gag clauses” to prevent pharmacists from discussing important issues related to PBMs with state policymakers.<sup>1</sup>

Given their direct contact with patients, pharmacists are uniquely qualified to discuss how PBM practices impact patient costs and patient choice. If a policymaker is to truly understand PBMs’ impact on drug costs, then that policymaker must hear the pharmacist’s perspective. However, as was discussed during last week’s Subgroup call, many pharmacists are hesitant to engage in those conversations due to fear of retaliation from the PBMs, often in the form of increased burdensome audits. States, such as Maryland, have found “independent pharmacists do not file complaints [with the Insurance Administration] because they are then retaliated against by the PBMs through audits and increased scrutiny.”<sup>2</sup> “Gag clauses” should not prevent pharmacists from helping policymakers make decisions in the public’s best interest.

Multiple states have addressed this issue, and we urge the Subgroup to consider amending Section 6(D) with language from the New Mexico Statutes:<sup>3</sup>

D. A pharmacy benefit manager contract with a participating pharmacist or pharmacy may not ~~prohibit~~ 1. Prohibit, restrict, or limit disclosure of information to the commissioner, law enforcement or state and federal governmental officials investigating or examining a complaint or conducting a review of a pharmacy benefit manager's compliance with the requirements under this Act; or 2. prohibit, restrict or limit pharmacies or pharmacists from providing to state or federal government officials general information for public policy purposes.

<sup>1</sup> Section 6(D).

<sup>2</sup> Maryland Insurance Administration. “Maryland Insurance Administration Pharmaceutical Services Workgroup Report” 13 (Jan. 21, 2018).

<sup>3</sup> NMSA 59A-61-5(E)(6).

Since taking effect, this law has allowed pharmacists to participate in policy discussions with government officials. It has been effective, and we urge the Subgroup to consider adding this proven language to the Draft.

We 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](mailto:matthew.magner@ncpa.org).

Sincerely,

A handwritten signature in cursive script that reads "Matthew Magner".

Matthew Magner, JD  
Director, State Government Affairs