



June 15, 2021

The Honorable Michael Conway, Chair  
Regulatory Framework (B) Task Force  
National Association of Insurance Commissioners  
444 North Capitol Street, NW, Suite 700  
Washington, DC 20001

VIA EMAIL

**Re: Pharmacy Benefit Manager Regulatory Issues (B) Subgroup White Paper Charge**

Dear Commissioner Conway:

I am writing on behalf of the Pharmaceutical Care Management Association (PCMA) to provide comments on the new 2021 Proposed Charge (charge) for the Pharmacy Benefit Manager (PBM) Regulatory Issues (B) Subgroup to develop a White Paper. PCMA is the national association representing America's PBMs, which administer prescription drug plans and operate specialty pharmacies for more than 270 million Americans with health coverage through Fortune 500 companies, health insurers, labor unions, Medicare, Medicaid, the Federal Employees Health Benefits Program (FEHBP), and the health insurance exchanges established by the Affordable Care Act (ACA).

While we understand that regulators may only have regulatory jurisdiction over insurers and PBMs, we believe it is critical for the NAIC to examine all entities involved in the delivery of prescription drugs as several states have done.<sup>1</sup> Simply focusing on PBMs does not provide regulators with a complete picture of the factors involved in the ultimate cost and coverage of prescription drug benefits. Additionally, without a more complete understanding of the entirety of the pharmaceutical supply chain, it is impossible to gauge the potential for consumer harm should the NAIC single out only one actor in the system. This recommendation is also consistent with Executive Order 14017 issued by the Biden Administration last week.

It is important to note that relatively few PBM contracts are directly with independent pharmacies. Eighty three percent (83%) of independent pharmacies contract with PBMs through a contracted relationship with Pharmacy Services Administrative Organizations (PSAOs).<sup>2</sup> PSAOs negotiate and enter into contracts with PBMs on behalf of their independent pharmacy clients. Among other

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<sup>1</sup> State of Wisconsin Governor's Task Force on Reducing Prescription Drugs

(<https://rxdrugtaskforce.wi.gov/Pages/Home.aspx>)

Governor Gretchen Whitmer's Prescription Drug Task Force

([https://www.michigan.gov/documents/mdhhs/Prescription\\_Drug\\_Task\\_Force\\_Report\\_12302020\\_FINAL.Web\\_1\\_712685\\_7.pdf](https://www.michigan.gov/documents/mdhhs/Prescription_Drug_Task_Force_Report_12302020_FINAL.Web_1_712685_7.pdf))

Oregon Drug Transparency Program

(<https://dfr.oregon.gov/drugtransparency/Documents/Prescription-Drug-Price-Transparency-Annual-Report-2020.pdf>)

<sup>2</sup> Health Evaluations: "Pharmacy Services Administrative Organizations (PSAOs) and Their Little Known Connection to Independent Pharmacies"



things, they negotiate pharmacy reimbursement rates, pharmacy payments and audit terms. Many PSAOs are owned by wholesalers, who also supply the drugs to stock pharmacies.<sup>3</sup> Several states have considered the regulation of PSAOs; both Maryland and Louisiana have recently passed laws to bring PSAOs under a regulatory scheme. These laws and the background behind them, as well as an examination of PSAOs and their role in the prescription drug supply chain, are critically important in understanding the delivery of prescription drugs and the full context of the prescription drug supply chain.

In addition, pharmaceutical manufacturers should be considered in the White Paper. They alone set and control the price of drugs. Rebates are discounts and concessions PBMs receive from pharmaceutical manufacturers and are considered by health plans and PBMs when creating drug formularies.

Therefore, in order for regulators to fully understand pharmacy benefits, the charge should be broadened to include all participants in the prescription drug supply chain, including wholesalers, PSAOs, and manufacturers. We recommend the following amendments to the charge:

**Draft Pharmacy Benefit Manager Regulatory Issues (B) Subgroup 2021 Charge:**

Develop a white paper to 1) analyze and assess the role that pharmacy benefit managers (PBMs), **Pharmacy Services Administrative Organizations (PSAOs), and other supply chain entities**, play in the provision of prescription drug benefits; 2) identify, examine and describe current and emerging state regulatory approaches to **PBM business practices related to drug prices**, such as price transparency and reporting requirements, **manufacturer rebates** ~~rebating~~ and spread pricing, including the implications of the *Rutledge vs. Pharmaceutical Care Management Association (PCMA)* decision on such business practices; and 3) discuss any challenges, if any, the states have encountered in implementing such laws and/or regulations.

We appreciate your consideration of our request and look forward to working with you and members of the PBM Regulatory Issues Subgroup on development of the White Paper. If you have any questions, I may be reached at [lrowley@pcmanet.org](mailto:lrowley@pcmanet.org) or 703-300-3507.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren", written in a cursive style.

Lauren Rowley  
SVP, State Affairs

CC: Jolie Matthews, Senior Health and Life Policy Counsel

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<sup>3</sup> Drug Channels: <https://www.drugchannels.net/2020/11/independent-pharmacies-learn-to-live.html>, November 3, 2020