August 31, 2020

Mr. Andrew R. Stolfi  
Chair, PBM Regulatory Issues (B) Subgroup  
National Association of Insurance Commissioners  
444 North Capitol Street, N.W.  
Suite 700  
Washington, D.C. 20001-1512

Submitted via email to Jolie Matthews @ jmatthews@naic.org

RE: AAPAN’s Comments on NAIC’s PBM Regulatory Issues (B) Subgroup Proposed Draft of the Pharmacy Benefit Manager and Regulation Model Act

Dear Chairman Stolfi:

The American Association of Payers, Administrators, and Networks (AAPAN) appreciates the opportunity to provide comments on the proposed draft of the Pharmacy Benefit Manager and Regulation Model Act. AAPAN is the national trade association for provider networks, payers, and other Workers’ Compensation organizations, including pharmacy benefit managers (PBMs). Through our members, we work to provide high-quality, cost-efficient delivery of prescription drugs to injured workers across the nation.

We seek clarification regarding the applicability of the proposed draft on the workers’ compensation market. As we reviewed the proposed draft, there were several areas of ambiguity that concerned our members. Specifically, in Section 3 – Definitions, “Covered entity” is defined to exclude plans that provide coverage for accidental injury. We interpret this to exclude workers’ compensation insurance. However, under the same section “Health benefit plan” is defined broadly to include a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of [physical, mental or behavioral] health care services. Since the definition for “Health benefit plan” is expansive we are unable to determine if this would include workers’ compensation insurance, especially since both terms are used throughout the proposed draft. Therefore, we request that the proposed draft be amended to exempt workers’ compensation programs from its requirements.

We appreciate the thorough work the Subgroup has undertaken to address rising healthcare costs and our members share in its’ commitment. However, we believe as it is currently written the proposed draft will add a layer of complexity, ambiguity, and cost to the workers’ compensation system. In an already complex, highly regulated environment, we believe that adding multiple regulatory frameworks will not benefit injured workers. Our members
are regulated by each state’s workers’ compensation agency. An additional regulator may create confusion or conflict between regulatory bodies.

The marketplace our members serve differs significantly from our counterparts in the commercial market. Our members do not use rebates to determine the placement of a medication on a formulary. Unlike commercial insurance plans, workers’ compensation PBMs cannot limit a formulary to favor one drug manufacturer over another. Furthermore, our members cannot control which manufacturer’s drugs a physician prescribes based on a formulary design. Drugs prescribed to injured workers are based on whether the injury is compensable and whether the prescribed drugs are medically necessary to treat the covered injury as determined by state-established formularies, established medical treatment guidelines, or other accepted medical evidence related to the specific injury. A workers’ compensation PBM may receive a small amount of rebate income that comes because a treating physician demands a brand drug be used, but again the workers’ compensation PBM has no control over that decision, and then the rebate is applied to reduce the cost of the drug to the insurer.

State workers’ compensation agencies and/or state laws regulate how workers’ compensation PBMs deliver and bill for pharmacy care to injured workers. Injured workers do not pay for services or medications (no co-pays, deductibles, or cost-sharing).

The workers’ compensation industry is a highly competitive marketplace, and our members are constantly seeking ways to lower costs for their customers. Workers’ compensation PBMs have the added complexity of coverage verification, including confirming details from the insurer about the eligibility of benefits, which medical care is compensable, and for which injuries. Through such complexities, our member’s top focus is to deliver safe, effective, and high-quality pharmacy care.

We look forward to working with you and the members of the Subgroup throughout the remainder of this process. Thank you again for considering our comments, and please do not hesitate to reach out if we can provide any additional support or information.

Sincerely,

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