



August 31, 2020

Jolie H. Matthews  
Senior Health and Life Policy Counsel  
National Association of Insurance Commissioners  
444 North Capitol Street, NW  
Hall of the States, Suite 700  
Washington, DC 20001-1509

Submitted via e-mail to [jmatthews@naic.org](mailto:jmatthews@naic.org)

RE: Comments from the Coalition of State Rheumatology Organizations on Pharmacy Benefit Manager Licensure and Regulation Model Act (“Model Act”)

Dear Ms. Matthews:

Thank you for the opportunity to submit comments on the draft *Pharmacy Benefit Manager Licensure and Regulation Model Act* (“Model Act”) by the National Association of Insurance Commissioners (NAIC). The Coalition of State Rheumatology Organizations (CSRO) is comprised of state and regional professional rheumatology societies throughout the country and was formed to advocate for excellence in rheumatologic disease care and to ensure access to the highest quality care for the management of rheumatologic and musculoskeletal diseases. Our coalition serves the practicing rheumatologist in charge of patient care for these illnesses.

The Model Act would establish a framework by which States could license pharmacy benefit managers (PBMs) who seek to operate within their jurisdictions. As an organization representing practicing rheumatologists, it is our position that PBMs have become harmful participants in our country’s drug supply chain, because they interfere in the practice of medicine and increase out-of-pocket costs for patients. Thus, CSRO has been engaged in several States to increase transparency and oversight of PBMs. Since licensure is a key tool to facilitate oversight, we thank the NAIC for its efforts and engagement to assist State legislatures with this topic.

States appreciate the urgency of this exercise. In 2019, fourteen States enacted and/or implemented PBM licensing or registration requirements. Several States have taken steps beyond licensure and established additional requirements for PBMs and rights for pharmacies and patients, in the form of pharmacy network standards and pharmacy auditing rights, among other provisions. We hope that NAIC's Model Act will provide all States with a foundational template for increasing oversight in this area.

As a general matter, we strongly support the Model Act's inclusion of a prohibition on gag clauses, as such State bans would complement the federal legislation that was enacted on the same topic. We offer the following feedback on specific sections of the Model Act:

#### Section 7 – Enforcement.

- We urge the inclusion of language expressly establishing a State's right to assess monetary penalties, in addition to any other noncompliance penalties a State may establish, against a PBM that is not in compliance with the licensure or any other relevant requirements established by the State.
- Additionally, we urge the inclusion of language expressly establishing the State's right to revoke a PBM's license and to suspend the PBM from doing further business in the State, until the PBM brings itself in compliance with all applicable State requirements. Again, if such language is included, we urge the Model Act to clarify that it would be in addition to any other noncompliance penalties a State may establish.
- Finally, we urge deletion of Section 7B(2)(c), so that States have full subpoena powers to access the information they need to effectively regulate these entities.

#### Section 8 – Regulations.

- In Section 8, the Model Act lists other areas of regulation that States may wish to undertake and, with regard to these, we urge NAIC to propose model language on these as well, specifically on the topics of clawbacks and spread pricing. We would be eager to assist NAIC in that effort.
- For now, in Section 8B(4), we urge NAIC to include "and other price concessions" after "rebates." Due to the increased pressure on PBMs to pass through rebates to patients, many price concessions from manufacturers to PBMs are no longer contractually defined as "rebates" but may be couched as "administrative fees" or any of a number of other terms. States – and ultimately, patients – deserve transparency with regard to the revenue streams flowing in and out of PBMs, regardless of what the PBM terms such revenues.

Thank you for your consideration of our viewpoints. Should you have any questions, please don't hesitate to reach out to Dr. Michael Schweitz, Chairman of CSRO Federal Advocacy, via the email address used for this submission.

Sincerely,

Dr. Mike Schweitz  
Chairman, CSRO Federal Advocacy