September 2, 2020

The Honorable Andrew R. Stolfi
Chairman – PBM Regulatory Issues (B) Subgroup
Members of the PBM Regulatory Issues (B) Subgroup

Delivered via email to Jolie Matthews at jmatthews@naic.org

Comments regarding the Pharmacy Benefit Manager and Regulation Model Act

Dear Chairman Stolfi and Members of the Committee:

The Commissioner of Securities and Insurance, Montana State Auditor appreciates the opportunity to comment on the draft of the *Pharmacy Benefit Manager Licensure and Regulation Model Act ("PBM Act")*. I appreciate the efforts of the PBM Regulatory Issues Subgroup ("Subgroup") for working toward a model law aimed at lowering the cost of prescription medication. Consumers across the nation are searching for relief from the ever-increasing cost of prescription drugs. While the *PBM Act* addresses the Subgroup's charge to create model legislation establishing licensing requirements on pharmacy benefit managers ("PBMs"), a more substantive regulatory framework must be prepared to provide meaningful relief to consumers. With the right perspective and direction, state and federal policies can eliminate perverse financial incentives in the pharmaceutical supply chain and create a better system to serve consumers' therapeutic needs without jeopardizing their pocketbooks.

The prospective licensing of PBMs is a well-intentioned regulatory effort, but such a requirement does not address increasing drug costs. Arguably, the costs associated with licensing, registration, and compliance will be passed on to consumers by PBMs in the form of higher premium and prescription drug prices. Without a substantive regulatory framework, the PBM licensing requirements proposed in Section 5 of the *PBM Act* may not benefit consumers at the pharmacy counter. Likewise, the Gag Clause prohibition contained in Section 6 of the *PBM Act* appears superfluous because a federal mandate already prohibits this practice. Alone, these provisions are not necessarily solutions to the epidemic of unsustainably high pharmaceutical costs.

Section 8 of the *PBM Act* is the most promising portion of the model law, but this section must be more thoroughly developed. The July 15th comment from the Pharmaceutical Care Management Association ("PCMA") complains that Section 8 lacks the specificity to meet most state legislative requirements. I agree. The Subgroup should substantively address each of the 14 regulatory topics delineated in Section 8.

To reach the level of specificity required for nationwide adoption of the *PBM Act*, the Subgroup should consider the robust regulatory mechanisms proposed in Montana's 2019 Senate Bill 71. This piece of legislation was adopted by the National Academy of State Health Policy as a model law and was the catalyst for Maine's 2019 Legislative Document 1504. Further, the language of these pieces of legislation address most of the 14 regulatory topics outlined in Section 8 of the

PBM Act. I hope that the Subgroup will consider incorporating some or all of these regulatory mechanisms into the *PBM Act*.

With the improvements and considerations outlined above, I look forward to working alongside the Subgroup to develop the *PBM Act* into a regulatory framework that will be a significant step forward in making pharmaceuticals, health care, and health insurance more affordable for consumers.

Sincerely,

MATTHEW M. ROSENDALE, SR.
Montana State Auditor
Commissioner of Securities and Insurance