September 1, 2020

The Honorable Andrew R. Stolfi
Chair
NAIC Pharmacy Benefit Manager Regulatory Issues (B) Subgroup
Insurance Commissioner, State of Oregon

Sent via e-mail to: jmatthews@naic.org

Commissioner Stolfi:

On behalf of the National Council of Insurance Legislators (NCOIL)\(^1\), thank you for the opportunity to participate in the National Association of Insurance Commissioners (NAIC) Pharmacy Benefit Manager (PBM) Regulatory Issues (B) Subgroup (Subgroup). Below please find NCOIL’s comments on the Subgroup’s draft of the proposed PBM Licensure and Regulation Model Act (Model).

First, we applaud the NAIC’s efforts to take action in this space in an effort to curtail the sharp business practices by some that have come to light the past several years. As you know, in recognition of that reality, NCOIL dedicated extensive time and resources to the issue of PBM regulation. This process resulted in the adoption of the NCOIL “PBM Licensure and Regulation Model Act” which is based on what was enacted into law in Arkansas in 2018, but is a slimmer version thereof.

NCOIL is pleased to see that Subgroup’s first draft of the Model essentially mirrors the NCOIL Model. However, NCOIL believes that the better approach is for the NAIC to develop a Model Regulation, rather than a Model Law. In fact, the NCOIL Model was intentionally drafted in such a way as to “pass the baton” to state regulators to develop regulations on issues including,

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\(^1\) As a reminder, NCOIL is a national legislative organization with the nation’s 50 states as members, represented principally by legislators serving on their states’ insurance and financial institutions committees. Founded in 1969, NCOIL writes Model Laws in insurance and financial services, works to both preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago and to serve as an educational forum for public policy makers and interested parties.
but not limited to: Pharmacy benefits manager network adequacy; Prohibited market conduct practices; Data reporting requirements under State price-gouging laws; Rebates; Prohibitions and limitations on the corporate practice of medicine (CPOM); Compensation; Procedures for pharmacy audits conducted by or on behalf of a pharmacy benefits manager; Medical loss ratio (MLR) abuses; Affiliate information sharing; and lists of health benefit plans administered by a pharmacy benefits manager in this state\textsuperscript{2}.

Developing a Model Regulation instead of a Model Act would therefore make sense from a workflow standpoint. Otherwise, since the current draft of the NAIC’s Model essentially mirrors NCOIL’s Model (which we acknowledge could change throughout the normal Model development process), states would be faced with duplicative Models from separate organizations – something that both NCOIL and NAIC have tried to avoid.

For these reasons, we encourage the Subgroup to develop a PBM Model Regulation that would build on NCOIL’s PBM Model law.

Thank you again for including NCOIL in this process. We look forward to working with the NAIC on this issue.

With appreciation for your consideration and kind regards, we are,

Very truly yours,

\textit{Tom Considine}

Thomas B. Considine
NCOIL CEO

cc: Hon. Matt Lehman
NCOIL President
Majority Leader
IN House of Representatives

Will Melofchik, Esq.
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\textsuperscript{2} I note that each of these issues is also included in the current draft of the NAIC’s Model Section 8 “Regulations.”