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August 27, 2020

Jolie H. Matthews
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners (NAIC)

Via email: jmatthews@naic.org

Re: Vermont Comments on PBM Draft Model

Dear Ms. Matthews:

Thank you for the opportunity to comment on the July 6, 2020 draft of the NAIC's Pharmacy Benefit Manager Licensure and Regulation Model Act. The Vermont Division of Insurance has reviewed the draft and offers the following comments and suggestions for the Regulatory Issues Subgroup's consideration.

1. The Division suggests adding a sentence to the definition of health benefit plans in Section 3(E) expressly stating that the phrase "health benefit plan" includes stand-alone prescription drug plans.

2. Section 5(F)(1) of the draft Model Act states that a license granted by the commissioner shall remain valid as long as the pharmacy benefit manager continues to do business in the state unless the license is "suspended or revoked by the commissioner." It does not appear, however, that the draft Act explicitly authorizes the commissioner to revoke or suspend a license. The Vermont Insurance Division believes that such authority (and the authority to impose financial penalties) should be explicitly stated in the model statutory text, especially in light of the fact that the commissioner's rule-making authority in Section 8 is limited to adopting regulations that "are not inconsistent with this Act."

3. The grounds for which a license may be revoked or suspended, or a financial penalty imposed, need to be specified. In addition, the amount of the penalty needs to be



specified, even if, in the Model Act, it is only variable. The Subgroup may want also to consider including an enhanced penalty for intentional or willful violations of the Act, as many states do in their insurance trade practices statutes.

4. Section 5(E) of the Model Act states that an applicant may be denied a license if the commissioner determines that it is not "competent, trustworthy, financially responsible or of good personal or business reputation." Although similar language has been upheld against vagueness charges by many state courts, especially in the case of egregious misconduct, Vermont would recommend adding "or has been found to have violated the insurance laws of this or any other jurisdiction."

5. Section 5(E) also provides that "[t]he commissioner may refuse to issue a license if," etc. To parallel the licensing statutes of Vermont and many other states, the Division suggests amending this language to read "[t]he commissioner may refuse to issue or renew a license if," etc. This addition would be supportive of the requirement in Section 5(F)(1) that the licensee annually file "a renewal application on a form prescribed by the commissioner" and would make approval of the renewal application a discretionary rather than ministerial act.

6. The Division believes that the phrase "[p]rovide for powers and duties of the commissioner in Section 2(B)(3)" might be clearer if phrased "[p]rovide additional powers and duties to the commissioner."

7. The Division suggests that the Subgroup consider moving current section 3(C)(2) in the definition of "Covered Entity" to Section 3(E), which defines a "health benefit plan," since section (C)(2) describes plans that are not covered rather than entities that are not covered.

8. Finally, Vermont suggests that the Subgroup consider adding a new drafting note to Section 7 ("Enforcement") indicating that states may want to consider incorporating their existing market conduct examination statutes into the Model Act rather than relying on the examination authority set forth in Section 7. Since states are likely to be familiar and comfortable with the scope and requirements of their existing market conduct laws, they may prefer to utilize these in an examination of a pharmacy benefit manager rather than the untested examination authority expressed in Section 7.

Thank you for the opportunity to comment on the draft Model Act. We appreciate the Subgroup's hard work in this important area.

Very truly yours,

Emily Brown
Director of Insurance Rates & Forms



Phil Keller
Director of Insurance Regulation

Chris Rouleau
Director of Market Conduct

