

Commissioner Joylynn Fix
Chair, Pharmacy Benefit Manager Regulatory Issues (B) Subgroup:
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC 20001

Via email: JMatthews@naic.org

RE: 2024 Charge for PBM Subgroup

Dear Chair Fix, Vice Chair Scott, and Members of the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup:

Thank you for the opportunity to comment on the 2024 proposed charges. NCPA is generally supportive of the proposed charges but offers feedback about prioritization that focus and refine the direction of the Subgroup for 2024 and beyond.

In brief summary of what is to follow, we have reordered the charges to reflect our view of their relative priority. We urge the PBM Subgroup to remain sharply focused on PBMs and to prioritize all activity related to enforcement of existing PBM regulation. We believe a focus on enforcement of existing law is a topic that most stakeholders can appreciate, if not agree upon, and brings practical value to state insurance regulators. Below please find our ranked priority charges with recommended edits.

- A. Serve as a forum to educate state insurance regulators on issues related to pharmacy benefit manager (PBM) regulation. ~~and other stakeholders in the prescription drug ecosystem.~~
- B. Monitor, facilitate and coordinate with the states and federal agencies regarding compliance and enforcement efforts regarding PBMs.
- C. Gather and share information, best practices, experience, and data to inform and support dialogue and information-sharing among state insurance regulators on issues related to PBM regulation, such as examinations, ~~and~~ contracting, ~~and pharmaceutical drug pricing and transparency~~, staffing, and other resources needed for PBM oversight.
- D. Maintain a current listing of PBM laws, ~~and~~ regulations, ~~and~~ case law, and enforcement actions for reference by state insurance regulators.
- E. Disseminate materials and reports, via the NAIC, to the states and the U.S. territories wishing to use the information gathered by the Working Group.
- F. Review and consider any necessary updates to the *Health Carrier Prescription Drug Benefit Management Model Act* (#22) out of the emergence of greater regulation in the prescription drug ecosystem.

Below we offer rationale for our prioritization and recommended edits.

- A. Serve as a forum to educate state insurance regulators on issues related to pharmacy benefit manager (PBM) regulation. ~~and other stakeholders in the prescription drug ecosystem.~~

NCPA believes the focus of the PBM Regulatory Issues (B) Subgroup should remain on educating state insurance regulators about PBMs. While many more regulators are aware of PBMs now than when NCPA first engaged PBM concerns twenty years ago, educating new regulators must remain a priority focus. Meanwhile, in our work in the states, NCPA observes constant obfuscation by PBMs to deflect attention from their egregious business practices. While we acknowledge the complexity of the supply chain, we believe expanding the purview of the PBM Subgroup is distracting and unhelpful when there is so much work undone related to PBM oversight. Once the Subgroup has achieved more of its objectives for this charge, NCPA would be supportive of engaging other areas of the supply chain. For 2024, we ask that you strike the language noted above.

- B. Monitor, facilitate and coordinate with the states and federal agencies regarding compliance and enforcement efforts regarding PBMs.

NCPA strongly supports the proposed charge as drafted and believes it should be a top priority for Subgroup activity in 2024. Nearly every state has legislated on PBM matters and yet pharmacies and the patients they serve aren't seeing the laws' intended effects because PBMs circumvent and/or flout the laws. Many states are going back to legislate new and stronger enforcement provisions. State insurance departments are beginning to add more and better enforcement provisions as part of their rulemaking. We believe NAIC can be a critical resource to state insurance departments tasked with new oversight responsibility. This charge requires higher priority.

- C. Gather and share information, best practices, experience, and data to inform and support dialogue and information-sharing among state insurance regulators on issues related to PBM regulation, such as examinations, ~~and contracting, and pharmaceutical drug pricing and transparency,~~ staffing, and other resources needed for PBM oversight.

NCPA strongly supports the charge of sharing information and best practices but believes the focus of the PBM Subgroup should remain on PBMs. NCPA has developed what we believe are best practices for PBM regulation enforcement, drawing specific examples from across the states. We believe this document can serve as a springboard for the Subgroup's engagement of enforcement issues. Among the best practices is appropriate staffing and resources. We have advocated for staffing, budgets, and other resources dedicated to PBM oversight to be collected for the annually published NAIC Insurance Department Resources Report (IDRR). We ask for these additions to the 2024 charge and recommendation collaboration within NAIC on making contributions to the IDRR.

- D. Maintain a current listing of PBM laws, ~~and~~ regulations, ~~and~~ case law, and enforcement actions for reference by state insurance regulators.

NCPA believes a state insurance regulator's understanding of the policy and legal environment would be incomplete without knowledge about enforcement actions taken in other states. Using 2023 as an example, there

were fines issued to Caremark of \$270,000 in West Virginia for repeated under-reimbursement violations and \$500,000 in Minnesota for repeated flouting of its patient steering law.¹ Express Scripts and MedImpact paid fines and restitutions of over \$2.5 million in Louisiana related to prompt payment.² With Centene's recent \$25 million settlement in South Carolina, the payer has now paid out nearly \$1 billion across 18 states for overcharging states.³ State insurance regulators need full profiles of PBM and insurer bad actors.

E. Disseminate materials and reports, via the NAIC, to the states and the U.S. territories wishing to use the information gathered by the Working Group.

NCPA supports the proposed charge as drafted.

F. Review and consider any necessary updates to the *Health Carrier Prescription Drug Benefit Management Model Act* (#22) out of the emergence of greater regulation in the prescription drug ecosystem.

Should the Subgroup revisit the model, we believe the most relevant possible addition would be a section with model provisions related to enforcement. However, having observed and engaged NAIC proceedings of the model legislation and PBM white paper, we see how it is possible to lose the forest for the trees. Disproportionate time is spent on verbiage instead of policy. NCPA prefers the previous proposed charges, especially those pertaining to best practices, as a means to helping state insurers oversee and enforce PBM regulation in 2024. We are open to revisiting model legislation in the future.

Thank you again for receiving our perspective about the 2024 proposed charges. We look forward to the PBM Subgroup's work in the year ahead. NCPA appreciates your interest in the subject matter and stands ready to be a resource to you.

Regards,



Joel Kurzman
Director, State Government Affairs

¹ <https://www.wvinsurance.gov/LinkClick.aspx?fileticket=2-yH9776d-I%3d&tabid=915&portalid=0&mid=6681> and <https://mn.gov/commerce/news/?id=17-575233>

² <https://ldi.la.gov/news/press-releases/11-9-23-ldi-fines-express-scripts-and-medimpact-for-delayed-pharmacy-payments>

³ <https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-nearly-26-million-awarded-to-south-carolina-in-centene-settlement/> and <https://californiahealthline.org/news/article/centene-investigation-california-215-million-dollar-settlement-alleged-medicare-overbilling/>