



January 12, 2018

The Honorable Chris Christie  
Office of the Governor  
P.O. Box 001  
Trenton, NJ 08625

**RE: Veto Request for A. 4676 – Prescription Drug Patient Protection Act**

Dear Governor Christie:

The Pharmaceutical Care Management Association (PCMA) is the national association representing America's pharmacy benefit managers (PBMs). We write to urge you to veto A. 4676, a bill that would place unworkable and burdensome regulations on PBMs, which administer prescription drug plans and operate mail-order and specialty pharmacies nationwide and throughout New Jersey. PBMs administer prescription drug benefits for individuals with health coverage through Fortune 500 companies, health insurers, labor unions, Medicare—as well as New Jersey FamilyCare, the State Employee Health Benefits Program, and the School Employees' Health Benefits Program.

A. 4676 would require PBMs to register with the New Jersey Department of Banking and Insurance (DOBI) as an organized delivery system (ODS), as defined in N.J.S.17:48H-1 *et seq.* DOBI already has direct regulatory authority over PBMs operating within the State.<sup>1</sup> The Department of Human Services regulates PBMs operating within the Medicaid program through its oversight over Medicaid managed care organizations (MCOs). Further, the Department of the Treasury regulates PBMs through its State Employee Health Benefits Program and School Employees' Health Benefits Program contracts. In sum, the State already exercises significant oversight of PBMs, both directly and indirectly, through regulations and contract requirements.

We believe that A. 4676 creates the wrong regulatory scheme for PBMs, which do not neatly fit into the construction of the ODS statute or regulations. PBMs are currently regulated by departments of insurance in many states—including New Jersey—and PCMA and its member companies have been constructive partners with legislators and regulators to develop appropriate oversight structures. PCMA and its member companies have been and continue to be ready to work with the bill sponsors in both the Senate and the Assembly, as well as DOBI, to develop PBM registration or alternative oversight language.

Defining a PBM as an ODS would also place significant regulatory burden on PBMs, potentially driving up costs for the employers and plan sponsors who rely on them to bring down health care costs. The statute requires an ODS to provide to DOBI with a "description of the means by which the organized delivery system shall be compensated for each contract entered into with a carrier,"<sup>2</sup> raising significant anticompetitive issues and targeting a key way that PBMs compete for business within the State. If signed into law, A. 4676 would require PBMs to provide DOBI with a standard provider agreement contract for the provision of health care services<sup>3</sup>—but PBMs do not have standard provider contracts (i.e., contracts with pharmacies, as PBMs do not contract with individual pharmacists). Contracts vary widely, depending on what a PBM's client desires.

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<sup>1</sup> See N.J.S.A. 17B:27F-1 *et seq.*

<sup>2</sup> See N.J.S. 17:48H-4(g)(5).

<sup>3</sup> See N.J.S.A. 17:48H-4(e).



This bill presents a number of serious operational and legal issues. PBM operations do not fit within the statutory definition of what an ODS does. For example, an ODS may be organized to subcontract to provide or arrange to provide “a separate category of benefits and services apart from...[a] comprehensive benefits plan.”<sup>4</sup> Pharmacy benefits, as administered by PBMs, are usually part of the plan sponsor’s comprehensive package of services, not a limited health care service.

There are many more specific concerns that we have with A. 4676, which we are more than willing to share with you and your staff as you consider a veto. The bottom line is that the current ODS statute and regulations were not intended to apply to prescription drug benefits administered by PBMs. Requiring PBMs to register with DOBI as an ODS and comply with the governing statute and regulations will ultimately result in curtailing PBMs’ cost-savings tools that are critical for the health benefits used by millions of New Jersey patients.

Thank you for your consideration. If PCMA can answer any questions or be of further assistance, please contact me at 202-756-5736 or [swoods@pcmanet.org](mailto:swoods@pcmanet.org).

Sincerely,

A handwritten signature in blue ink that reads "R. Scott Woods".

R. Scott Woods  
Senior Director, State Affairs  
Pharmaceutical Care Management Association

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<sup>4</sup> See N.J.S.A. 17B:27F-1.