



December 10, 2018

Mr. Eugene A. DePasquale
Auditor General
Department of the Auditor General
Harrisburg, PA 17120-0018

Re: Report on Pharmacy Benefit Mangers

Dear General DePasquale:

PCMA has received a copy of your report on pharmacy benefit managers (PBMs) and provides this response to express concerns about some of the statements and conclusions included. PCMA is the national association representing PBMs, which administer prescription drug benefits for more than 266 million Americans with health coverage through large and small employers, health insurers, labor unions, Medicare, Medicaid, and other programs.

After attending and speaking at each of your listening tour stops in the Commonwealth and testifying before a Senate committee on October 16, 2018, working to educate your office and the public on the value of PBMs in the health care system, how PBMs work with other entities in the pharmacy supply chain, how PBMs serve Medicaid, and how the existing mechanisms of PBM oversight work in Pennsylvania, we were surprised and discouraged to see the significant imbalance in the discussion in the report, and very little PBM perspective included.

It is very important to set the record the straight on the misinformation in your report. PBMs provide substantial value to the clients who choose to hire us, and this was further explained in the October legislative hearing by representatives of the health insurance industry. Our clients, including state Medicaid programs, rely on PBM tools to deliver quality patient care and manage ever-increasing costs. We would like to provide a few key facts that address the overarching themes included in your report.

Transparency

All PBM clients (e.g., large employers, health plans, insurance carriers, Medicaid managed care organizations) have 100% transparency into their contracts. PBMs compete vigorously for client business and clients dictate the terms of their contracts, including those relating to how pharmacies will be reimbursed and how a PBM will be reimbursed for its services (for example, “spread” vs. “pass-through”). Clients retain the right to—and regularly do—audit their contracts with PBMs to ensure that PBMs are complying the terms, sharing rebates appropriately, and reimbursing pharmacies in accordance with law and contract. Moreover, PBMs partner with their clients to educate and inform beneficiaries on their pharmacy benefits and assist beneficiaries in accessing and navigating high quality and cost effective pharmacy services.

Although your report acknowledges the existence of pharmacy services administrative organizations (PSAOs) and the fact that they are “experts in pharmacy contracting,” there is no mention of transparency into the contracts between PSAOs and pharmacies. These contracts



are an integral part of the PBM-pharmacy relationship because they bridge the gap between PBMs and small pharmacies and increase the negotiating leverage of these smaller pharmacies.

The report also fails to address transparency for others in the supply chain, such as drug manufacturers, who are the entities responsible for setting and raising prices for their products. PBMs are always actively working to reduce the net cost of drugs, and PBMs are the only entities in the pharmacy supply chain that are focused on *reducing* costs.

Furthermore, the report incorrectly states that rebate dollars are retained by PBMs, when in fact, PBMs pass through to clients the significant majority of rebate dollars—and all rebate dollars in Pennsylvania Medicaid. Clients use the value of rebates to reduce the overall cost of providing the health care benefit, and in Medicaid, the value of rebates ultimately flows back to the state and federal governments. It is also factually incorrect to state that PBMs retain manufacturer rebates in Medicaid.

PBM Oversight

Most states in the country have regulations dealing with PBMs, including Pennsylvania. In 2016, sweeping PBM legislation was enacted (HB 946). This law established Department of Insurance oversight of PBMs through registration, established comprehensive protections for pharmacies when responding to an audit by a PBM, and set parameters around PBM reimbursement of pharmacies. This law went into effect less than two years ago.

In Medicaid, oversight is even greater. Medicaid managed care organizations and their subcontractors are some of the most highly regulated entities in the country. They are governed by both federal and state statutes and regulations relating to all aspects of their business, most notably licensure, program operations and quality, and capitation rate development. Detailed contracts with federal and state agencies lay out all of the terms and conditions for operating in the Medicaid program, and Medicaid officials have full ability to audit the performance of these contracts. In addition, new contract requirements in Medicaid managed care require a significant amount of state visibility into MCO-PBM contracts, including reimbursement methodologies, “spread” and administrative fee arrangements, and significant data submissions around pharmacy encounters. As with all client contracts, Medicaid managed care organizations have total direct oversight of PBMs, and PBMs cannot cause their clients to fall out of compliance with any of the clients’ regulatory or contractual obligations. The Medicaid program has multiple layers of oversight and this oversight is sufficient.

In addition, Congress recently passed and the president signed legislation (S. 2553 and S. 2554) banning the use of “clawback” provisions and “gag clauses.” PCMA supported this federal legislation and similar legislation in Pennsylvania, and indicated such at your listening tour sessions. To the extent these types of contract clauses ever existed in the marketplace, they have been eliminated, despite what pharmacies have claimed.

Reimbursements

The report makes several claims that PBMs have paid community pharmacies unfairly and that pharmacies are getting unfairly squeezed. This is simply untrue. The community pharmacy



industry continues to thrive in Pennsylvania and across the country. As of January 2018, independent pharmacies comprised 38% of the pharmacy market in Pennsylvania.¹ Between 2010 and 2017, the number of independent retail pharmacies in Pennsylvania grew from 932 to 1,077, an increase of 15.5%. Nationally, the number of independents grew 12% over the same period, while the number of chain retail pharmacies decreased 2.3%.² In addition, gross profits remain high in pharmacy nationally – hovering around 21% in 2016.³ In fact, the National Community Pharmacy Association’s own senior vice president was recently quoted in a news publication that “the number of community pharmacies has been “holding pretty steady for several years.”⁴

A PBM’s primary function is to deliver a high-quality pharmacy benefit to patients at the lowest net cost to the client. It would be inappropriate for PBMs to focus on enriching pharmacies, as policies that favor subsidizing pharmacies would threaten access to pharmacy services for the Commonwealth’s most vulnerable citizens. We believe that all stakeholders in the health care system have a responsibility to help lower health care costs and pharmacy providers are no exception. The industry seeks to reimburse network pharmacies at competitive rates that balance the need to fairly compensate pharmacies while providing a cost-effective benefit for the clients and consumers they serve. The community pharmacy industry, especially in Pennsylvania, remains strong.

Finally, we request that this response letter accompany the final version of your report. As you know, it is customary to include the response letter of any entity being audited as an attachment to the final report issued by your office.

Thank you for considering our comments, and please feel free to contact me at 202-756-5743 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "April C. Alexander".

April C. Alexander
Assistant Vice President, State Affairs

¹ Quest Analytics analysis of NCPDP dataQ data, 2017.

² Id.

³ NCPA 2017 Digest, <http://www.ncpa.co/pdf/digest/2017/2017-digest-lr.pdf>.

⁴ Bill Radford, The Gazette, available at: https://gazette.com/business/independent-pharmacies-fight-to-survive-in-colorado-springs/article_074fdd1e-e394-11e8-b9f9-5f6b989271e8.html