January 31, 2019

The Honorable John Mizuno
Chair, Committee on Health and Human Services
415 S. Beretania St, Room 402
Honolulu, Oahu, HI, 96813-2425

Submitted Electronically

Re: H.B. 1442, a bill relating to pharmacy benefit managers

Dear Chair Mizuno:

The Pharmaceutical Care Management Association (PCMA) appreciates the opportunity to provide comments on the provisions in H.B. 1442, a bill relating to pharmacy benefit managers and generic reimbursement using maximum allowable cost (MAC).

PCMA is the national trade association for America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage through independent businesses, health insurers, labor unions, and federal and state-sponsored health programs.

For over two decades, PBMs have delivered innovative solutions based on payer and patient needs. In an age of high-priced and specialty drugs, payers continue to look to their PBMs for solutions to improve affordability, quality, and access for patients. PBMs bring value to their members and health benefit plan sponsors by limiting excessive prescription drug spending and curbing instances of waste, fraud and abuse.

We have concerns around the analysis presented in the bill as inaccurate as it does not correctly reflect pass-through pricing [The amount the PBM pays the pharmacy is charged (or passed-through) to the client] as well as the cost-share calculation used when there are disparate MAC lists. Therefore, PCMA is concerned about the following provisions in the bill and respectfully request the amendments indicated:

Page4 lines 17 – 21; Page 5 lines 1-3: (c) The pharmacy benefit manager shall make available to a contracting pharmacy~~, not less than once per quarter, and~~ upon request, a comprehensive report for all drugs on the maximum allowable cost list <u>for a plan</u>, which contains the most-up-to-date maximum allowable cost price or prices used by the pharmacy benefit manager for patients served by the pharmacy, in a readily accessible, and secure~~,~~ <u>electronic</u> ~~and~~ or usable web-based ~~or other comparable~~ format.

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Rationale: Pursuant to current law, PBMs make available to all Hawaii contracted pharmacies an easily accessible, electronic method of looking up specific drugs subject to MAC reimbursement rates. This provides pharmacies with the most up-to-date, real-time pricing information applicable to a given drug on a MAC list. They do not, however, automatically provide a list because the lists vary by plan and can become outdated quickly due to the nature of the generic drug marketplace. Therefore, the above requested amendments seek to balance the contracted pharmacy's ability to request a comprehensive MAC list by plan with encouraging the use tools already in use that provide the most current up-to-date reimbursement information.

Page 5 lines 14-21; Page 6 lines 1-3: (e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list at least once every seven days using the most recent data sources available, ~~and shall apply the updated maximum allowable cost list beginning that same day to reimburse the contracting pharmacy until the pharmacy benefit manager next updates the maximum allowable cost list in accordance with this section; provided that the pharmacy benefit manager shall reimburse a contracting pharmacy for a drug based on the maximum allowable cost of that drug on the day the drug is dispensed.~~

Rationale: PBMs don't make price changes effective the same day to avoid having prices change mid-day. This would be impossible to do, as any price change would be effective the following day. This provision also appears to conflict with provision F 'that we have to notify pharmacies of any increase of more than 10% and give them at least 3 days' notice. Therefore, we recommend removing this provision from the bill.

Page 6 lines 4-9: <u>(f) The pharmacy benefit manager shall notify all contracting pharmacies of a ten per cent or greater increase in drug acquisition cost for any drug on the maximum allowable cost list from sixty per cent or more regional pharmaceutical wholesalers at least three days prior to initiating any changes to the maximum allowable cost for that drug. The notification required under this subsection may be provided electronically and shall contain the national drug code of the drug whose acquisition cost is increasing.</u>

Rationale: This requirement is <u>**impossible**</u> for a PBM to comply with as PBMs do not have control of or visibility to pharmaceutical wholesalers' pricing. Also, if we were to confirm price changes online, there is a risk of a breach of proprietary information if competitors were to receive our source data. This provision more appropriately should be required by a pharmacy's PSAO. A PSAO not only signs the contracts with PBMs on behalf of the independent pharmacists it contracts with, it is also often the entity that acts as the pharmacies wholesaler to the contracted pharmacy. As the wholesaler to

the pharmacies it contracts with, a PSAO will have the information when the price to the pharmacy for drugs increases.

Page 7 lines 14-21; Page 8 lines 1-2: (4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide to the contracting pharmacy the reason therefor and the national drug code of an equivalent drug that may be purchased by a similarly situated pharmacy at a price that is equal to or less than the maximum allowable cost of the drug that is the subject of the appeal, ~~with the name of the source, including but not limited to the wholesaler or distributor, where the drug may be purchased; and~~

Rationale: This would be impossible for a PBM to comply with. In Hawaii, 60 of the 62 independent pharmacies that use a PSAO are using a PSAO from a large national wholesaler. PBMs cannot make a wholesaler sell to a pharmacy nor can they make a wholesaler sell a drug at a particular price. If the wholesaler won't or can't sell to a pharmacy it is not in the control of a PBM.

Page 8 lines 14-19: ~~(h) Any pharmacy benefit manager that refuses a maximum allowable cost reimbursement for a properly documented claim from a contracting pharmacy under this section shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce, within the meaning of section 480-2.~~

Rationale: There may be other reasons to refuse a claim such as audit or patient safety. This provision is very broad and could open up Hawaii plan sponsors to fraud, waste and abuse. As written, this provision could circumvent the established MAC Appeals process agreed to in the PBM-pharmacy contract. A prescription could be "properly documented" but been submitted improperly, which could show up in an audit. Additionally, the penalty is extremely excessive, and section 431R-5 already grants the insurance commissioner the authority to assess a fine for violations of sections 431R-2 and 431R-3. Section 4 of this bill would include the section in 431R where this bill would be codified as one of the sections subject to the commissioner's authority to assess fines for violations. Page 10 Line 20.

Page 8 lines 20-21; Page 9 lines 1-10:
(i) A contracting pharmacy shall not disclose to any third party the maximum allowable cost list and any related information it receives, either directly from a pharmacy benefit manager or through a pharmacy services administrative organization or similar entity with which the pharmacy has a contract to provide administrative services for that pharmacy, ~~except to the insurance commissioner or an elected representative. The maximum allowable cost list and related information disclosed to the insurance commissioner or an elected representative shall be considered proprietary and confidential and not subject to public records requests under chapter 92F.~~

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Rationale: The information that a contracting pharmacy receives is competitive and proprietary information that is the property of the PBM. A contracted pharmacy should not be permitted to turn over a PBM's competitive and proprietary information without providing proper notice to the PBM so that it may takes steps to protect such information. Additionally, we are concerned that the broad use of the term "elected representative" could mean many things and if an elected representative happens to be a pharmacy owner, they would then have access to competitive reimbursement information regarding their competitors. This would be anti-competitive and could lead to increased costs for plan sponsors and consumers.

Page 9 lines 11-20: (i) The insurance commissioner shall adopt rules pursuant to chapter 91 **to enforce the provisions of this section**. ~~establish a process to subject complaints of violations of this section to an external review process and resolve disputed claims, which may be binding on a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made, except to the extent that the parties have other remedies available under applicable federal or state law, and which may assign the costs associated with the external review process to a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made."~~

Rationale: Private contracts between the PSAO and PBMs, or pharmacies and PBMs, should utilize the resolution process in their contract. We are concerned that having a external review process through the insurance commissioner would lead to frivolous complaints, and would drive up the costs of health care for health plans, employers, and ultimately consumers. If there are any contractual issues that arise between a PSAO and a PBM or a pharmacy and a PBM, they are handled by contract with appropriate remedies available to the parties under the law making an external review process unnecessary

Page 10 lines 7-9: "Maximum allowable cost list" means a list of ~~the maximum allowable reimbursement costs~~ of ~~multi-source~~ drugs for which a maximum allowable cost has been established by a pharmacy benefit manager.

Rationale: Our amendment would restore the definition to the definition that was negotiated in 2015 and what is in current law. The proposed language would significantly alter what drugs may be included on a MAC list. This could lead to higher costs for health plan sponsors and consumers.

We appreciate your consideration of our comments.

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Sincerely,

Lauren Rowley
VP, State Affairs

cc: House Health and Human Services Committee Members

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