February 26, 2019

The Honorable Mariannette Miller-Meeks
1007 East Grand Avenue 50319
Des Moines, Iowa 50319

Re: SF 347 An Act Relating to Pharmacy Benefit Managers and Health Carriers

Dear Chair Miller-Meeks and Members of the Human Resources Committee,

On behalf of the Pharmaceutical Care Management Association (PCMA) I am submitting this letter to express our concerns regarding SF347, a bill requiring reporting of proprietary information. PCMA is the national trade association for pharmacy benefit managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage provided by large and small employers, health insurers, labor unions, and federal and state-sponsored health programs.

PBMs exist to make drug coverage more affordable by aggregating the buying power of millions of enrollees through their plan sponsor/payer clients. PBMs help health care consumers obtain lower prices for prescription drugs through price discounts from retail pharmacies, rebates from pharmaceutical manufacturers, and using lower-cost dispensing channels. Though unions, large employers, and public programs are not *required* to use PBMs, most *choose* to because PBMs help lower the costs of prescription drug coverage.

While we agree that the rising cost of pharmaceuticals in this country is a serious problem, we believe that parts SF347 are counterproductive because they present significant legal problems and could actually *raise* drug prices.

The Employee Retirement Income Security Act of 1974 (ERISA) preempts state reporting and disclosure requirements such as the ones included in SF347. ERISA is the federal law that governs all employer-based health plans, including both fully-insured and self-insured plans, and Louisiana residents who work for private sector employers are for the most part enrolled in ERISA plans. PBMs provide administrative services to those ERISA plans. ERISA provides a "comprehensive system for the federal regulation of employee benefit plans,"[i] and as the Supreme Court recently noted, there must be a "single uniform national scheme for the administration of ERISA plans without interference from the laws of several states."[ii] No state mandate can directly or indirectly interfere with key matters of plan administration. As the Supreme Court noted in *Gobeille*, ERISA's "reporting, disclosure, and recording requirements for welfare benefit plans are extensive," and states cannot impose differing or parallel regulations on administrators.

SF347 requires PBMs to report to the Commissioner of Insurance: pharmaceutical rebate data; administrative fees; and any other monies retained by a PBM that are not reimbursed to a pharmacy. Requiring reporting and disclosures to a state official or agency about the economic basis for a plan's provision of prescription drug benefits in Iowa intrudes on what the federal courts have called "a matter central to plan administration," and further "interferes with nationally uniform plan administration."[iii] Because PBMs are performing key administrative functions for ERISA plans, states

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
Washington, DC 20004
www.pcmanet.org

cannot impose mandates—either directly or indirectly—that interfere with that administration, or that result in the imposition of a patchwork of differing regulatory requirements on PBMs.

SF347's call for revealing rebate amounts while the state is likely under the mistaken belief that this type of information would benefit consumers. We believe that it is important that there be a competitive marketplace among drug manufacturers in order to drive down the cost of prescription medications. Though SF327 directs the commissioner to keep the data confidential, the risk of accidental public disclosure still exists. Any public disclosure of rebate information would allow manufacturers to learn what type of price concessions other manufacturers are giving, thus establishing a disincentive from offering deeper discounts. The Federal Trade Commission (FTC) has stated that, "[i]f pharmaceutical manufacturers learn the exact amount of rebates offered by their competitors, then tacit collusion among them is more feasible" and "[w]henever competitors know the actual prices charged by other firms, tacit collusion — and thus higher prices — may be more likely."[iv]

The FTC has also warned several states that legislation requiring PBM disclosure of negotiated terms could increase costs and "undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford."[v] Finally, the Department of Justice and the FTC issued a report noting that "states should consider the potential costs and benefits of regulating pharmacy benefit transparency" while pointing out that "vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms."[vi]

It is for these reasons; we must respectfully oppose SF 347.

Respectfully submitted,

Melodie Shrader
Senior Director – State Government Affairs

[i] District of Columbia v. Greater Was. Bd of Trade, 606 U.S. 125. 127 (1992)
[ii] Gobeille v. Liberty Mutual Ins. Co., 577 US (2016)
[iii] Gobeille, 577 US (2016),136 S.Ct at 945.
[iv] Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, (July 15, 2005); Letter from FTC to Assemblyman Greg Aghazarian, California State Assembly, (September 3, 2004).
[v] id
[vi] US Federal Trade Commission & US Department of Justice Antitrust Division, "Improving Health Care: A Dose of Competition," July 2004.

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