October 29, 2019

Mr. Jeffrey E. Hawley, Ph.D.
Research Assistant
Utah Insurance Department
State Office Building, Rm. 3110
350 N. State Street
Salt Lake City UT 84114

*Via email: jhawley@utah.gov*

**Re: Proposed Rule Implementing HB 370 (2019) - PBM Licensure & Reporting**

Dear Dr. Hawley:

I am writing to provide the Pharmaceutical Care Management Association (PCMA) comments on the Utah Insurance Department's (UID's) proposed rule to implement HB 370 (2019), relating to pharmacy benefit manager (PBM) licensure and reporting. PCMA is the national trade association representing PBMs, which manage prescription drug benefits for large employers, health insurance carriers, labor trusts, government programs, and other payers. We appreciate the opportunity to provide comment on the proposed rule, license application, and report template and instructions. Our comments are organized by each document, as indicated below.

**Utah PBM Report Instructions**

1. Part 1 of the report instructions requires PBMs to submit aggregated information on rebates and administrative fees, pursuant to 31A-46-301. 31A-46-301(b) requires the reporting of the total value, in the aggregate, of all rebates and administrative fees attributable to enrollees of a contracting insurer. The legislature indicated that reporting should be in the aggregate—and in this case, aggregating rebates and administrative fees, and across insurers. The legislature did not require reporting of aggregate rebates, and separately, aggregate administrative fees. In addition, the legislature, acknowledging the sensitive, proprietary nature of the data addressed in the new law, signaled a desire to ensure that no PBM or insurer would be specifically identified through the data submission. (See 31A-46-301(3)(b).) This means that the reporting of both aggregate rebates and aggregate administrative fees separately is an expansion of the statute, and that there is no need to report rebates and administrative fees by *each* insurer.

   PCMA suggests the following amendment:

   TOTAL REBATES AND ADMINISTRATIVE FEES

   This is the total financial value (in dollars) for all of the rebates and administrative fees the PBM collected during 2019 that are attributable to ~~the~~ enrollees of ~~each~~ a contract~~ed~~ing insurer (see REBATE). This number should be the total ~~full~~

~~negotiated~~ value in aggregate of ~~the~~ rebates and administrative fees received by the PBM from ~~the~~ Drug Manufacturers prior to retaining a portion of the rebates by the PBM and sending the remaining portion of the rebates to ~~the~~ a contracting insurer.

2. Part 1 of the Report Instructions calls for "Total Rebates Retained" to be reported. However, this is not supported by the statute. 31A-46-301(c) requires that the PBM report "the *percentage* of aggregate rebates that the pharmacy benefit manager retained under the pharmacy benefit manger's agreement to provide pharmacy benefits management services to a contracting insurer." 31A-46-301(b) and (c) call for value of *aggregate* rebates and administrative fees and the *percentage of aggregate rebates* the PBM retained, not the "total rebates retained."

   PCMA suggests striking the title and section: Total Rebates Retained.

3. Part 1 of the Report Instructions calls for the reporting of "Administrative Fees." The law does not support required reporting of administrative fees separate from the aggregate reporting with rebates. The statute requires the "total value of rebates and administrative fees," which would be the sum of rebates plus administrative fees.

   PCMA suggests striking the title and section: Administrative Fees.

4. Part 2 of the Report Instructions calls for reporting of rebates, rebates retained, percent retained, and administrative fees, *broken down by the list of contracted insurers*. This section of report instructions is not supported by statute. In fact, the legislature was clear in 31A-46-301(3)(b) indicating that the aggregate rebate, fees, and percent retained was not to be publicly disclosed in a manner that would make a specific submission from a contracting insurer or PBM identifiable. There is no need for the UID to collect this information by contracting insurer. The information was intended to be sufficiently aggregated and collected so as not to identify any particular insurer, PBM, or drug manufacturer.

   PCMA suggests striking Part 2 in its entirety.

**Reporting Template**

5. PCMA requests that amendments made to the Report Instructions as suggested above are reflected in the final reporting template.

**Proposed Rule**

6. R590-282-5 (Reporting Requirements) outlines the responsibilities of the commissioner and PBMs relating to the use of the PBM's submitted data for commissioner reports to the public. The statute and the proposed rule require the commissioner to provide the PBM the submitted data that will be published *or a general description of that data* (emphasis added). PCMA appreciates the UID's acknowledgment that the data addressed in this law is highly sensitive and should be handled carefully. However,

PCMA is concerned that the PBM associated with the data will have a difficult time determining whether there is a concern with the data if there is only a general description of what would be reported. Thus, we request that this be clarified to ensure that the general description provides sufficient information for a reporting PBM to discern whether any correction of errors is necessary or if the publication of data would violate section 31A-46-301(3)(b) (any specific insurer or PBM data is identifiable or the information included in the report is a trade secret).

7. In addition, PCMA is concerned that the PBM response time of 14 days in R590-282-5(3)(b) will be insufficient time to assess the information and make the determination that the use of the data by UID may have adverse consequences. Finally, since the burden of complying with the timeframe falls on the PBM, ideally the compliance should be in the control of the PBM (i.e., the PBM should be able to *deliver* the request by a certain time, as opposed to the commissioner receiving it by a certain time frame).

   Thus, PCMA suggests the following amendment:

   (3)(b) If a PBM chooses to respond with information specified in Subsections 31A-46-301(3)(c)(ii)(A) or (B), the response must be ~~received by~~ delivered to the commissioner within ~~14~~ 30 days of the date the email described in Subsection R590-282-5(3)(a).

Thank you for the opportunity to provide comment on this proposal. Please contact me at 202-756-5743 if you have any questions.

Sincerely,

April C. Alexander
Vice President, State Legislative and Regulatory Affairs

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