



April 20, 2020

The Honorable Larry Hogan
Governor of the State of Maryland
The State House
100 State Circle
Annapolis, MD 21401

Re: HB1307 – Pharmacy Benefit Managers – Credentialing & Reimbursement

Dear Governor Hogan:

On behalf of the Pharmaceutical Care Management Association (PCMA), we respectfully request your veto on HB 1307, a bill which would prohibit a reduction in pharmacy payments during a reconciliation process regardless of contractually agreed to terms and would negatively impact pay for performance programs. 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 provided by plan sponsors such as large employers, health insurers, labor unions, and federal and state-sponsored health programs. 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.

The primary focus of PBMs is to create solutions for payers to improve the quality of patient care while managing ever-growing costs. HB 1307 (page 5 lines 13-19) prohibits PBMs in their private market contracts with pharmacies from reducing a payment paid to a pharmacy after it has been paid during a normal, agreed upon reconciliation process. This section specifically will prohibit a PBM from both contracting a pharmacy in a pay-for-performance model, or from using any aggregated reimbursement methods, both of which are commonly used practices used nationwide.

Generic Effective Rate (GER) guarantees are a type of aggregated reimbursement paid by PBMs to pharmacies and are used to provide reimbursement predictability for pharmacies dispensing generic medications; likewise, Brand Effective Rate (BER) guarantees are used in the reimbursement for brand drugs. Instead of focusing on an individual drug's reimbursement amount for a specific transaction, PBMs and pharmacies use GER/BER to manage to a predictable, aggregate reimbursement level for a group of a pharmacy's claims. Most independent pharmacies use a Pharmacy Services Administrative Organization (PSAO) to act as their agent for the purposes of contracting for GER/BER-based reimbursement. Those PSAOs then negotiate payments with PBMs on behalf of a group of independent pharmacies giving them significant negotiating strength. Payment reconciliations between PBMs, PSAOs, and independent pharmacies based on these GER/BER guarantees typically occur semi-annually and result in some pharmacies being paid more and some being paid less based on the reimbursement they have received throughout the year.

The concerns about payment reductions during a reconciliation process have little to do with GER/BER, but rather stem from the relationship between the pharmacy and their PSAO. As you know, HB 978 – which is also pending your review – will create transparency into the opaque

PSAO/pharmacy relationship by giving Maryland policymakers and pharmacies greater insight into a vital part of the reimbursement process. Instead of considering this issue in the proper context of the problem, HB 1307 restricts practices that are commonly contracted for by pharmacies across the country.

By restricting the PBM's ability to make any of reduction in payment during a reconciliation, the bill could also create a circumstance whereby PBMs intentionally reimburse pharmacies lower than is their current practice on a claim by claim basis to ensure that any reconciliation that occurs afterward, would be guaranteed to have positive payment to pharmacies and not a recoupment. This scenario of lowered initial reimbursements would perhaps have the opposite effect of the bill sponsor's stated intent.

This section of the bill also takes health care a step backwards by prohibiting certain pay for performance programs between PBMs and pharmacies. Similar to how performance-based incentives for hospitals and doctors were initially used in Medicare, once proven as a tool that improves patient care and quality outcomes, the private market began looking at ways to use these same tools and demanded that their health plan and PBM be able to use both the carrot and the stick to ensure the highest quality care. The pharmaceutical industry is just starting to offer outcomes-based contracts for drugs. Unfortunately, since a PBM could not reduce reimbursements to a pharmacy except in the instance of an audit, this bill would prohibit pay-for-performance provisions that have downside risk and eliminate any opportunity to extend pay for performance to the pharmacy branch of healthcare. This type of prohibition is antithetical to the progress of the health care system and is a departure from the trend of payment for value.

It is for these reasons, PCMA respectfully requests a veto of HB1307. We appreciate your consideration of our concerns. If you have any questions, please feel free to reach me at 202-756-5729.

Respectfully,



Heather R. Cascone
Senior Director, State Affairs

cc: Michael Johansen, Esq.