



VIA EMAIL AND US PRIORITY MAIL

April 29, 2021

Honorable Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

Dear Governor Cuomo:

I am writing to you on behalf of the nearly 600 members of the New York City Pharmacists Society (“NYCPS”). NYCPS was formed over 30 years ago in an effort to coordinate the professional initiatives of our pharmacists who live and/or work in the New York City area. Our objective is to help provide the best medications, health guidance and related patient services as a local affiliate organization of the Pharmacists Society of the State of New York (“PSSNY”).

As you know, community-based independent pharmacists are on the front line of health care in our Empire State especially in the various multicultural communities of New York City. Many residents, especially the working poor, turn to their local independent pharmacists for health care guidance instead of heading to the local hospital emergency room.

Governor Cuomo, back in May 2020, we welcomed your offer to include pharmacists in fighting the COVID-19 pandemic. As you made the announcement at one of your daily press conferences at the pandemic’s height, we were touched to hear you say those words. However, at the time you announced this important initiative, the behind-the-scenes structure was not in place and it took months to assemble. Now looking back to what pharmacists are doing to help stop COVID-19 from destroying our friends and neighbors, you see the value of community-based independent pharmacists assisting the communities they serve with COVID-19 testing and lifesaving COVID-19 vaccines. I know of two pharmacists who died from COVID-19 in the past year and scores of other pharmacists who were infected with COVID-19, some of whom are “long haulers,” who continue to struggle daily.

This letter is sent to emphasize the value of your New York Community pharmacists and the hope that you will re-evaluate your posture when legislation which affects the pharmacy profession and the patients we serve.

With that background, I want to address areas of concern that have arisen because of the long-term issues of dealing with COVID-19 as pharmacists working in the community, facing the virus on a daily basis while providing important life-saving medications, and assisting patients with COVID-19 testing and vaccinations.

Over the years of your leadership as our governor, our members have been extremely disappointed in many of the decisions made in your executive chambers regarding the various public health legislative initiatives presented in the Senate and Assembly. These legislative initiatives have been an effort by both NYCPS and PSSNY to enable our members to serve the patients in our communities during these very challenging times in health care. This is in consideration of the merger mania that has taken place, the closed health care networks prolific in New York State and the intrusion and interference of mail order pharmacies into the day-to-day efforts of our membership in the practice of pharmacy — many of these mail order pharmacies operate outside of New York State — and add to the detriment of the independent pharmacy business climate within the Empire State. In the following passages, I will review some of the issues that came across your desk and were vetoed, or to which you made chapter amendments that greatly watered down the legislative initiatives and rendered them basically worthless. Other issues that helped cause the erosion of the profession of pharmacy were railroaded through the annual budget process to help appease certain power players in the pharmacy arena.

Listed below are some of our legislative disappointments which occurred during your leadership:

1) April 12, 2018, New York Governor Signs Bill Providing Independent Pharmacies Greater Audit Protection from PBMs

On April 12, 2018, New York Governor Andrew Cuomo signed Assembly Bill A9507C, enhancing oversight and limitations on how PBMs can audit and recoup on pharmacies located in New York. The bill limits PBM audits to 100 randomly selected prescriptions and only permits a PBM to audit a prescription within 24 months after claim submission or adjudication. Furthermore, a PBM can no longer recoup on unintentional clerical errors that do not result in financial burden, provided the prescription was otherwise correctly filled. This bill marks a major success for New York pharmacies' protections against abusive PBM audit practices. **(Final results: a toothless tiger, has NO, and I mean NO, enforcement, or value as this legislation never provided for any designation of state agency to enforce or regulate this industry which was the intent and desire of the sponsors of this legislation. The current PBM marketplace laughs at our members when we mention this legislation as a defense.)**

2) New York Governor Signs Bill Providing for Pharmacy Appeals for Multisource Drugs when underpaid. Effective March 10, 2016

New York State Maximum Allowable Cost (“MAC”) of Generic Drugs Appeal Bill, March 10, 2016.

The Pharmacists Society of the State of New York and the New York State Chain Pharmacy Association worked together to successfully pass a MAC Appeal bill that was recently signed into law by Governor Cuomo. The new public health law takes effect on March 10, 2016, and requires a reasonable process to appeal, investigate and resolve disputes regarding multi-source generic drug

pricing (MACs) within contracts between pharmacies or pharmacy contracting agents and pharmacy benefit managers. The law was supposed to be simple and straightforward. It started with a working definition of a pharmacy benefit manager (PBM): “An entity that contracts with pharmacies or pharmacy contracting agents (PSAOs) on behalf of a health plan, state agency, insurer, managed care organization, or other third-party payor to provide pharmacy health benefit services or administration.” **(Nevertheless, the final result is another toothless tiger. This bill also has NO, and I mean NO, enforcement, or value. As stated above again, this legislation never provided for any designation of a state agency to enforce or regulate the industry which the statue was intended. The PBMs also ignore this statute).**

3) December 13, 2011 Governor Andrew Cuomo has signed into law legislation (S.3510-B/A.5502-B) that would prohibit health insurance providers from requiring their customers to obtain prescription drugs from mail order pharmacies only. (Commonly known as the Anti Mandatory Mail Order Legislation aka “AMMO”)

“Consumers deserve the freedom of choice,” said Senator Maziarz, who sponsored the bill in the Senate, “particularly when it comes to making decisions about their health and wellbeing. No one should be forced to get their medicine through the mail. This new law protects a citizen’s ability to go to a trusted neighborhood pharmacist to obtain their prescription drugs.”

According to the new proposed law, which took effect 30 days from passage, customers would still have the option to obtain prescriptions from mail order pharmacies. However, they will also retain the option to do business with non-mail order retail pharmacies in the provider’s network.

Nevertheless, the final results were that this AMMO bill is yet another toothless tiger. Another example of a bill that has NO, and I mean NO, enforcement, or value. At the last minute before signing this important legislation, you, Governor Cuomo, requested a **chapter amendment** that watered down any value this bill had by adding that pharmacists must conform to the same **terms and conditions** of the existing mail order pharmacies. The chapter amendment required pharmacists to match the national internal structure of the mail order pharmacies, (such as by maintaining sophisticated dedicated telephone lines, tracked call centers, tracking dropped calls, tracking patient complaints etc.) with which independent pharmacies must compete is an impossible task on this unlevel playing field.

4) NYS Legislature Passes the Nation's Toughest Bill to Regulating PBM Middlemen June 21, 2019

S6531 and A2836-A Will Set New Standards for PBM Transparency, Requires Pharmacy Benefit Managers to be Fair in Their Dealings with Patients, Health Plans, and Pharmacies

“We pharmacists did thank the members of the New York State Legislature for passing these bills, the leadership of Speaker Heastie and Senate Leader Stewart-Cousins, as well as Health and Insurance Committee Chairs Senators Breslin and Rivera and Assembly Members Gottfried and Cahill, who took the time to understand the issues and act in the best interest of New York’s patients, consumers, taxpayers and healthcare providers,” said Debbi Barber, PSSNY President. “This legislative victory turned out to be a hollow one, even though it demonstrated our concerns were recognized by the Senate and Assembly and stood as a statement to the power of communities

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coming together to work for the greater good, and an acknowledgement of years of effort that will hopefully ultimately result in a better, healthier New York. We had looked forward to working with you, Governor Cuomo, so New York can lead the way in regulating PBMs and protecting patients.”
This bill was vetoed by you Governor Cuomo. Why?

OTHER DETRIMENTAL ACTION

The Pharmacy Technician Debacle: For decades, New York State has maintained a very strict standard for pharmacists dispensing medications. While other states have permitted the use of pharmacy technicians, New York State was more cautious and never gave that designation any consideration, only permitting a pharmacist to allow two “unlicensed personnel” to assist a pharmacist in the dispensing role at pharmacies. Under pressure from the lobbyists representing the various New York State not-for-profit hospitals, in the New York State Budget enacted on April 1, 2020, you pushed through a new wrinkle to the New York State Education Department policy on pharmacy support staffing. Pharmacies are now permitted to call their unlicensed personal “pharmacy technicians” and the previous ratio for such support staffing, which had been at a two-to-one ratio, now jumps to a four-to-one ratio. Also, under certain circumstances, pharmacies based in hospitals may now use technicians to assume the role of pharmacists in sterile and unsterile compounding.

We hear through the health care grapevine this was done to appease the major nonprofit hospitals because they wanted to save on their payroll by reducing the number of pharmacists, and replacing them with lower-paid, non-college educated, pharmacy technicians. Governor Cuomo do you know how many hospital medication errors are caught by sharp-eyed, quick-thinking pharmacists? Yet, you let these well-trained Doctor of Pharmacy newly minted pharmacists to be replaced by pharmacy technicians. As an aside regarding the New York State Board of Pharmacy (the “Board”), it is striking that we have noticed there has been very little policy decision-making from the Board during the COVID-19 pandemic. Typical guidance a pharmacist would get from the Board about drug dispensing, off-label use, emergency dispensing, etc., for the past 15 months have not been directly answered and many times the questions are deflected to the New York State Department of Health. Interestingly, the Board of Pharmacy, NOT the Department of Health licenses pharmacies and pharmacists.

The Medicaid Redesign Team Mess: At the outset of your first year as governor, you assembled a Medicaid Redesign Team (MRT) to help cut the costs associated with the New York State share of Medicaid. One of the initiatives, which turned out to **COST** New York State money, was the MRT fiasco with the switch from Fee-for-Service to Managed Care effective October 1, 2011. This allowed the various Medicaid Managed Care Organizations, health plans and their affiliated pharmacy benefit managers to use drug reimbursement based on spread pricing techniques. Further, they were able to capture the difference between the drug cost paid to the pharmacies and the amount billed to New York State (despite the alleged capitation system for these managed care operators). Your first Medicaid Director, Jason Helgerson, was so much in favor of the use of the managed care program that he allowed these plans to have a free ride and create unique formularies of pharmaceuticals which wreaked havoc in the health care for our state’s poorest and most at-risk populations. Thank you, Mr. Helgerson, and where are you now?

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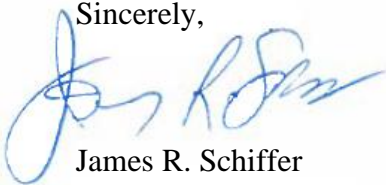
When an effort was made to return the pharmacy benefit to the Fee-for-Service model, the various MCOs got their lobbyists to block this in the New York State Senate and Assembly. We doubt that the Fee-for-Service program will ever recapture the pharmacy benefit in New York State, costing New Yorkers billions of dollars. The affected health plans and hospitals will never let go of that 340B cash they are grabbing. Another nail in the coffin for pharmacists in the Empire State.

Governor Cuomo, as I mentioned in the beginning of this letter, we welcomed your offer in May 2020 to include pharmacists in fighting the COVID-19 pandemic. After reviewing this letter, I hope you have a sense of value of community-based independent pharmacists in New York.

The icing on the cake - - so to speak - - was the members of the NYCPS, we collectively ask, "What in the world caused Governor Cuomo to ignore pharmacists as one of the groups of essential workers for your planned essential workers memorial?" The group of essential workers includes nurses, doctors, hospital staff, teachers, transport workers, police, ambulance/EMT, firefighters, corrections, sanitation, National Guard, store employees, government employees, building service workers, utility workers, delivery drivers and construction/manufacturing.

As you see we are deeply troubled as we look back upon your actions relating to our profession. As our governor, over the past nearly 12 years, you have demonstrated a lack of respect and appreciation for the pharmacists of New York. We ask that you recognize our value in the communities we serve. Besides adding pharmacists as essential workers recognized in the proposed memorial, we request your support for pharmacists in our mission to help all New Yorkers stay in good health going forward when legislation in support of PBM state registration and oversight and also concerns on patients access to the important services provided by community pharmacies reaches your desk for your signature.

Sincerely,



James R. Schiffer
Secretary to the NYCPS Board