

June 17, 2022

Pharmacy Benefits Bureau  
New York State Department of Financial Services  
1 State Street  
New York, NY 10004

**RE: NCPA response to RFI PBM 2022-01: The Duty, Accountability and Transparency of Pharmacy Benefit Managers to Health Plans under Public Health Law Section 280-a(2)**

To whom it may concern:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in response to the request for information on the duty, accountability and transparency of pharmacy benefit managers to health plans under Public Health Law Section 280-a(2). NCPA represents the interest of America's community pharmacists, including the owners of more than 19,400 independent community pharmacies across the United States and 2,561 independent community pharmacies in New York. These New York pharmacies filled over 142 million prescriptions last year, impacting the lives of thousands of patients in your state.

NCPA urges the Department to implement rules concerning the PBM's accounting to the health plan they serve. PBMs have created an opaque pricing structure that is meant to benefit themselves to the detriment of plan sponsors and patients. These opaque practices make it nearly impossible for plans to adequately demand a full accounting to ensure their PBMs are meeting their statutorily imposed obligations. Therefore, it is vital that the Department implement rules establishing a minimum baseline that PBMs must meet while servicing their clients.

As the Department looks to implement rules, NCPA recommends you consider the federal Pharmacy Benefit Manager Transparency Act, [S. 4293](#), which was recently introduced in Congress. The bill contains a number of transparency provisions that would be appropriate for implementation by the Department in New York.

Specifically, the bill contains provisions addressing the disclosure of:

(A) the cost, price, and reimbursement of the prescription drug to each health plan, payer, and pharmacy with which the pharmacy benefit manager, affiliate, subsidiary, or agent has a contract or agreement to provide pharmacy benefit management services;

(B) each fee, markup, and discount charged or imposed by the pharmacy benefit manager, affiliate, subsidiary, or agent to each health plan, payer, and pharmacy with which the pharmacy benefit manager, affiliate, subsidiary, or agent has a contract or agreement for pharmacy benefit management services; or

(C) the aggregate amount of all remuneration the pharmacy benefit manager receives from a prescription drug manufacturer for a prescription drug, including any rebate, discount, administration fee, and any other payment or credit obtained or retained by the pharmacy benefit manager, or affiliate, subsidiary, or agent of the pharmacy benefit manager, pursuant to a contract or agreement for pharmacy benefit management services to a health plan, payer, or any Federal agency (upon the request of the agency).

...

(1) The aggregate amount of the difference between the amount the pharmacy benefit manager was paid by each health plan and the amount that the pharmacy benefit manager paid each pharmacy on behalf of the health plan for prescription drugs.

(2) The aggregate amount of any—

(A) generic effective rate fee charged to each pharmacy;

(B) direct and indirect remuneration fee charged or other price concession to each pharmacy; and

(C) payment rescinded or otherwise clawed back from a reimbursement made to each pharmacy.

(3) If, during the reporting year, the pharmacy benefit manager moved or reassigned a prescription drug to a formulary tier that has a higher cost, higher copayment, higher coinsurance, or higher deductible to a consumer, or a lower reimbursement to a pharmacy, an explanation of the reason why the drug was moved or reassigned from 1 tier to another, including whether the move or reassignment was determined or requested by a prescription drug manufacturer or other entity.

(4) With respect to any pharmacy benefit manager that owns, controls, or is affiliated with a pharmacy, a report regarding any difference in reimbursement rates or practices, direct and indirect remuneration fees or other price concessions, and clawbacks between a pharmacy that is owned, controlled, or affiliated with the pharmacy benefit manager and any other pharmacy.

The data and information referenced in these provisions are of the exact same type referenced by Section 280-a(2) of New York's Public Health Law. The information would give health plans a better understanding of how the money meant for patient care is being distributed and used by their PBMs. It would also give health plans insight into how potential conflicts of interest, such as PBM ownership of pharmacies, is impacting costs and access to care. Finally, it would shed light on the motivations behind formulary decisions that affect drug costs and potentially disrupt patients' access to certain medications.

In addition to the provisions mentioned in S. 4293, the Department should consider implementing rules “concerning the PBM’s disclosure to the health plan of the terms and conditions of any contract or arrangement between the PBM and any party relating to pharmacy benefit management services.” Specifically, the Department should require PBMs to disclose information related to their relationships with group purchasing organizations (GPOs). The largest PBMs have formed their own GPOs, which then negotiate rebates and other price concessions with drug manufacturers on behalf of the PBM.<sup>1</sup> The Department must ensure a PBM cannot avoid its obligation to disclose by using a third-party to perform its duties. Manufacturer rebates are meant to bring costs down for the health plan, and the health plan deserves to know whether that is true, regardless of whether those rebates are negotiated by the PBM or its GPO.

In conclusion, NCPA strongly urges the Department to implement rules concerning PBMs’ duty to be transparent with the health plans. Only through transparency will plans have the information they need to control costs for the patients they serve. Thank you for your time and consideration. If you have any questions about the information in these comments, please do not hesitate to contact me at [anne.cassity@ncpa.org](mailto:anne.cassity@ncpa.org).

Sincerely,



Anne Cassity, JD  
Vice President, Federal and State Government Affairs  
National Community Pharmacists Association

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<sup>1</sup> See Adam J. Fein, “Drug Channels News Roundup, August 2021: OptumRx’s New GPO, Pharmacy DIR Fees, State Biosimilar Laws, UM Views, and a Newspaper Delivers,” Drug Channels (Aug. 25, 2021) <https://www.drugchannels.net/2021/08/drug-channels-news-roundup-august-2021.html>.