

March 9, 2023

Pharmacy Benefits Bureau  
New York State Department of Financial Services  
Via email: [PBM@dfs.ny.gov](mailto:PBM@dfs.ny.gov)

RE: Request for Comments: PBM2022-07

Dear Bureau,

The National Community Pharmacists Association (NCPA) is pleased to comment on the audit practices of Pharmacy Benefit Management companies (PBMs). NCPA members have long been subject to egregious audit practices by PBMs in New York State and elsewhere, leading to legislation being successfully enacted in 44 states to address these concerns. However, as is true in other areas of PBM legislative and regulatory oversight, effective rulemaking and strong enforcement are keys to ensuring the legislated policies are realized. We applaud the Pharmacy Benefits Bureau for seeking feedback from stakeholders.

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 more than 2,500 independent community pharmacies in New York State. These pharmacies employed nearly 32,000 individuals and they filled approximately 163 million prescriptions in 2021, generating more than \$10.3 billion in total sales.

Pharmacists understand that audits are a necessary practice to identify fraud, abuse, and wasteful spending, and they are not opposed to appropriate audits to identify such issues. Current PBM audits of pharmacies, however, are often used as an additional revenue source for the PBM. PBMs routinely target community pharmacies and recoup vast sums of money for nothing more than harmless clerical errors where the correct medication was properly dispensed and no financial harm was incurred. In many instances, the PBM not only recoups the money paid to the pharmacy for the claim in question but also recoups for every refill of that claim, even if all other fills were dispensed without error.

New York is not alone in recognizing the need to address abusive audit practices. In their 2014 Final Call Letter, the Centers for Medicare and Medicaid Services (CMS) indicated their recognition of abusive audit practices occurring within the Part D program. CMS found that pharmacy audits in the Part D program were not focused on identifying fraud and financial harm but on targeting clerical errors that "may be related to the incentives in contingency reimbursement arrangements with claim audit vendors."<sup>1</sup>

1 <https://www.cms.gov/medicare/health-plans/medicareadvtspecratestats/downloads/announcement2014.pdf>

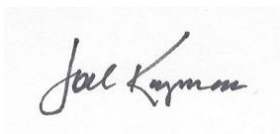
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Thank you for recognizing the need to seek public comment about this important issue. If you have any questions, please do not hesitate to contact me at (703) 600-1186 or [joel.kurzman@ncpa.org](mailto:joel.kurzman@ncpa.org).

Sincerely,

A handwritten signature in black ink that reads "Joel Kurzman". The signature is written in a cursive style with a clear, legible font.

Joel Kurzman  
Director, State Government Affairs