

February 5, 2024

Will Kerby
Division of Insurance
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, TN 37243

Via email: William.kerby@tn.gov

Dear Mr. Kerby:

The National Community Pharmacists Association (NCPA) is pleased to offer support and constructive feedback to the Division of Insurance's rulemaking to amend Chapter 0780-01-95 pertaining to pharmacy benefit management companies (PBMs). NCPA is committed to working with state agencies across the country to implement best practices for enforcing existing PBM regulations. We commend the State of Tennessee for its rigorous effort to curb the egregious business practices of PBMs.

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 475 independent community pharmacies in Tennessee. These pharmacies employed more than 5,800 individuals and they filled more than 30 million prescriptions in 2021, generating approximately \$1.26 billion in total sales.


NCPA strongly supports policies that provide Offices of the Insurance Commissioners (OIC) authority to enforce PBM regulations, including the authority to conduct audits of PBMs as found in Rule 0780-01-95-.11. That said, we suggest adding a provision of "not less than every three years" to ensure proactive oversight. We support much of the detail proposed in Rule 0780-01-95-.11, especially paragraph (2) providing access to the Insurance Commissioner of all books, records, securities, documents, and files at any time. It is our experience that PBMs seek to withhold information where possible, so we commend the proposed language for its breadth, scope, and clarity. We also support the Division's pursuit of detailed processes related to appeals processes, among the most rigorous in the nation. NCPA agrees with the policy of assessing all audit costs to the PBM per Rule 0780-01-95-.12.

NCPA urges stronger language and policies as it relates to enforcement in Rule 0780-01-95-.16 and recommends including enforcement provisions throughout Chapter 0780-01-95. Specifically, Rule 0780-01-95-.16 paragraph (2) states the language states the Commissioner "may" sanction PBMs in the same enforcement scheme as all other insurance violations per T.C.A. 56-2-305. We recommend striking "may" and replacing with "shall." That said, we believe the broader insurance regulation enforcement policies in T.C.A. 56-2-305 are potentially onerous and therefore less helpful to the pressing needs of independent community pharmacies in the face of predatory PBM business practices. By placing relevant enforcement provisions into Chapter 0780-01-95, the Insurance Commissioner will be better equipped to address violations in ways that are meaningful to independent community pharmacies.

We appreciate the concept found in Rule 0780-01-95-.11 paragraph (9) to authorize the Insurance Commissioner to take any action deemed necessary or appropriate for curing violations, including but not limited to the payment of civil penalties. However, NCPA recommends the rule language be stronger and more explicit about civil penalties, including an enforcement scheme that addresses repeat violations with greater levels of sanction. We recommend a minimum fine of \$10,000 per violation with no maximum, especially for violations of pharmacy reimbursement requirements. We recommend the capture of these fines into an account dedicated to funding PBM oversight. For repeat violations, we recommend explicit inclusion of sanctions such as suspension of license, barring from serving state employee health plans, and revocation of license.

Thank you for receiving our feedback. We salute the State of Tennessee for its groundbreaking efforts in the area of PBM reform. If I can answer any questions, please don't hesitate to contact me at joel.kurzman@ncpa.org or (703) 600-1186.

Sincerely,

A handwritten signature in black ink that reads "Joel Kurzman". The signature is written in a cursive style and is centered within a light gray rectangular box.

Joel Kurzman
Director, State Government Affairs