June 4, 2024

Joylynn Fix, Chair
PBM Regulatory Issues (B) Subgroup
National Association of Insurance Commissioners
444 North Capitol Street, NW, Suite 700
Washington, DC 20001
EMAIL: JMatthews@naic.org

Dear Chair Fix:

I write on behalf of the Pharmaceutical Care Management Association ("PCMA") as a follow up to both our written comments to Regulatory Framework (B) Task Force ("Task Force") Chair Glen Mulready on April 18, 2024, as well as on March 10, 2024, and our public comments to the Task Force, during a meeting on March 16, 2024, and to the Pharmacy Benefit Manager ("PBM") Regulatory Issues (B) Subgroup ("Subgroup"), during a meeting on May 2, 2024.

PCMA member companies administer drug benefits for more than 275 million Americans, who have health coverage through employer-sponsored health plans, commercial health insurance plans, union plans, Medicare Part D plans, managed Medicaid plans, state employee health plans, and others. PBMs use a variety of benefit management tools to help these plans provide high quality, cost-effective prescription drug coverage to plan beneficiaries.

On behalf of both PCMA and our member companies, we would like to both thank the Task Force, the Subgroup, as well as the staff at National Association of Insurance Commissioners ("NAIC"), for the 2024 Revised Proposed Charges ("Charges") as most recently drafted on May 10, 2024. Specifically, we appreciate the removal of consideration of the development of a model act related to PBMs. We believe this is the correct decision, based upon the reasons outlined in our letter to you from April 18, 2024.

We do suggest some minor edits to the new provision C of the May 10, 2024, version of the draft C

[redacted]
225 7th Street, NW, 9th Floor

We do not oppose the language of the new provision C. However, PCMA respectfully requests some minor edits be made to the provision, to include language that matches the collaborative spirit of this process, with something along the lines of what is immediately below:

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor

Dear Chair Mulready:

[illegible] member companies, we would like to expand upon the NAIC's 2024 Revised Proposed Charges ("Charges") as drafted on February 29, 2024. Generally, these Charges as revised and proposed would make changes to the Pharmacy Benefit Manger ("PBM") Regulatory Issues (B) Subgroup ("Subgroup").

PCMA is a national trade association representing pharmacy benefit managers ("PBMs"). PCMA member companies administer drug benefits for more than 275 million Americans, who have health coverage through employer-sponsored health plans, commercial health insurance plans, union plans, Medicare Part D plans, managed Medicaid plans, state employee health plans, and others. PBMs use a variety of benefit management tools to help these plans provide high quality, cost-effective prescription drug coverage to plan beneficiaries.

We appreciate the Task Force's willingness to revisit the purpose of the Subgroup and its Charges. As indicated during past Task Force and Subgroup meetings discussing the Charges, the Charges are not reflective of the current landscape of the pharmaceutical supply chain or the regulation of that supply chain at the state and federal levels.

As we have previously outlined in our written comments from March 10, 2024, as well as oral comments on March 16, 2024, to the Task Force, it is important to remember the relationships between _____ that are in the pharmaceutical supply chain. Payors, such as health plans, labor unions, employers, and government entities often contract with PBMs to manage the pharmacy component of the health benefit on the payor's behalf. Payors dictate the terms of the contracts with the PBMs, and the PBMs perform the functions required of them. One of the

First, there does not appear to be a consensus or even an appetite to develop model language regarding PBM regulation. One point that became clear during the discussion that occurred in 2021, during a meeting of the Plenary Committee on the then-proposed Pharmacy Benefit Manager Licensure and Regulation Model Act (“PBM Model”), is that there are several different approaches to regulating PBMs. It was also clear that states preferred their particular version of PBM regulation. And it was stated that it would be impossible to reach a consensus on one preferred approach. By the time the NAIC considered the PBM Model, almost every state legislature had already determined how they wanted to regulate PBMs. Moreover, most regulators did not want to adopt a model that did not conform with their state legislature's preferred approach.

since the NAIC voted on the proposed PBM Model, which would warrant the NAIC considering new PBM model language. If anything, state legislatures and regulators are more wedded to their particular state approach now than before since they have been implementing and fine-tuning that approach over the last few years making it less likely that the NAIC could develop one preferred approach to regulate PBMs.

Second, the Health Carrier Prescription Drug Benefit Management Model Act ("Model 22") is an inappropriate vehicle for updating PBM regulation. Model 22 does not regulate PBMs; it regulates health carriers that utilize PBMs. This approach presents a couple of major issues. First, Model 22 does not apply to the entire PBM industry. As noted in a drafting note to the Purpose and Intent section of Model 22 (Section 2), Model 22 "is not intended to address prescription drug formularies and other pharmaceutical benefit management procedures health carriers or their designees may use for purposes of workers' compensation." Presumably, it would also not apply to the health component of auto insurance or other similar coverages since these carriers are not health carriers.

A5es2704sdally, as noted above, Model 22 5 ( M)3.4 (odel)-1 ( 22 5 ( M)3.6)k.8 (e ar)0.7 (e not )]ets7 (i)-i5esd0

525 7th Street NW 9th Floor

have not adopted the underlying language in their home state. Rather than discussing whether they should amend Model 22, the Task Force would be better served by asking whether they should archive the Model.

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As outlined above, states have already adopted the regulations that they believe are necessary to oversee PBMs in their state. The Subgroup's website already boasts the following regulatory guides:

- _____ (2021)
- _____ (2023)

Together these two documents include _____ _____, and importantly do not include any of legislation or regulations adopted since their publication, nor any of the pending legislation currently being considered in the 2024 legislative sessions. This shows that the states are actively regulating PBMs in the way that they believe is best for their state.

Therefore, PCMA respectfully requests that the Task Force, rename the proposed Working Group to the "Pharmaceutical Supply Chain (B) Working Group and change the Revised Proposed Charges as follows:

> A. Serve as a forum to educate state insurance regulators on issues related to ~~pharmacy benefit manager (PBM) regulation and other~~ stakeholders in the prescription drug ecosystem.
>
> B. Gather and share information, best practices, experience, and data to inform and support dialogue and information-sharing among state insurance regulators on issues related to ~~PBM~~ Pharmaceutical Supply Chain regulation, such as examinations and contracting, and pharmaceutical drug pricing and transparency.
>
> ~~C. Review and consider any necessary updates to the Health Carrier Prescription Drug Benefit Management Model Act (#22) out of the emergence of greater regulation in the~~

525 7th Street NW Suite 600

We again thank the Task Force for considering our comments on this important matter. PCMA looks forward to the opportunity to continue working with the Task Force as it considers critical issues regarding the pharmaceutical supply chain and all its complexities included therein. If you need any additional information, please reach out to me at: (pfjelstad@pcmanet.org).

Sincerely,

Peter Fjelstad
Assistant Vice President, State Legal & Regulatory Affairs

CC: Jolie Matthews
Senior Health and Life Policy Counsel, NAIC

Enclosures (1)

525 7th Street NW Suite 600

March 10, 2024

Commissioner Glen Mulready
Chair, Regulatory Framework (B) Task Force
National Association of Insurance Commissioners
444 North Capitol Street, NW, Suite 700,
Washington, DC 20001
EMAIL: JMatthews@naic.org

By focusing on all aspects of the pharmaceutical supply chain, a re-focus of the Subgroup to this larger ecosystem allows regulators to ensure proper visibility of all of the entities that impact the costs and access associated with prescription drugs in their state.

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Some proposed charges for this new Pharmaceutical Supply Chain Subgroup could include the following:

- Monitor, report, and analyze developments related to the pharmaceutical supply chain, including such entities as, pharmaceutical manufacturers, wholesale distributors, PSAOs, PBMs, health plans/insurers. and pharmacies – the role each entity plays in the supply chain and make recommendations to the Regulatory Framework (B) Task Force regarding NAIC strategy and policy with respect to those developments.

- Monitor, facilitate, and coordinate best practices with the states and the federal government related to the pharmaceutical supply chain and the role of the different entities within the chain.

- Survey state-enacted laws, including the relevant statutes and administrative rules/regulations, including those pertaining to pharmaceutical supply chain entities, to determine whether there are areas of consensus that could serve as a basis for findings to report to the Regulatory Framework (B) Task Force.

We thank the Task Force for considering our comments on this important matter. PCMA looks forward to the opportunity to provide input to the Task Force as it considers important pharmaceutical supply chain issues and all of the complexities included therein. If you need any additional information, please contact me at pfjelstad@pcmanet.org.