February 2, 2018

The Honorable Sam Kito
Chair, House Labor and Commerce Committee
Alaska State Capitol
120 4th Street
Juneau, Alaska 99801

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORTS HOUSE BILL 240

Dear Representative Kito,

I am writing to you today on behalf of the National Community Pharmacists Association (NCPA) in support of HB 240. The bill would take steps to strengthen Alaska's pharmacy provider laws, allowing community pharmacists in Alaska to better serve their patients without pharmacy benefits managers (PBMs) imposing unfair and burdensome requirements.

NCPA represents the interest of America's community pharmacists, including the owners of more than 22,000 independent community pharmacies across the United States and 24 independent community pharmacies in Alaska. These Alaskan pharmacies filled over 1.4 million prescriptions last year, impacting the lives of thousands of patients in your state.

Requiring Pharmacy Benefits Manager Registration

PBMs are involved with almost every aspect of the prescription drug supply chain, including plan designs, formulary design, and contracting with health plans and pharmacies. Despite this level of involvement, PBMs are largely unregulated. More than twenty states require some type of registration for PBMs to do business within their state, and most of those states require that PBMs register with the state's division of insurance.

NCPA believes this section of HB 240 is a step towards more oversight for a massive, predominately unregulated industry.

Ensuring Fair Audit Practices for Pharmacies

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

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for the claim in question but also recoups for every refill of that claim, even if all other fills were dispensed without error.

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." CMS concluded that "full claim recoupment should only take place if the plan learns that a claim should not have been paid under Part D at all; for example, because it is fraudulent." NCPA supports the finding of CMS and recognizes that these types of abusive PBM audits do not occur only in Medicare Part D plans.

PBMs will argue that this bill limits the ability of PBMs and health plans to conduct pharmacy audits, but this legislation does not prevent audits from occurring for their intended purpose – preventing fraud, waste, and abuse. In fact, HB 240 specifically states that PBMs may conduct audits and recoup money in such instances.

NCPA is confident HB 240 will establish reasonable standards to ensure that PBM audit abuses are curtailed without undermining the ability to identify fraud or legitimate errors.

Providing Transparency for Multi-Source Generic Drug Pricing

PBMs typically establish a list, often referred to as a maximum allowable cost (MAC) list, for multi-source generic drugs that determines the amount a PBM will pay for certain drug products. The process PBMs use to determine the drugs and the prices of the drugs included on the list, however, lacks any degree of transparency. This process is further complicated by the fact that PBMs frequently maintain multiple lists. There is no standardization in the industry for the criteria or methodology used to determine inclusion or pricing of a drug on one of these lists. In most cases, these lists remain entirely confidential to both the PBM's client – the health plan sponsor – and the pharmacy; therefore, there is no way of knowing how or why a health plan sponsor or pharmacy is paying or being paid the PBM-set price for a drug. This gives PBMs the ability to gain significant revenues through questionable business practices.

For example, PBMs will typically use an aggressively low price list to reimburse their contracted pharmacies and a different, higher list of prices when they sell to their clients or plan sponsors. Essentially, the PBMs reimburse low and charge high with their price lists, pocketing the significant "spread" between the two prices. HB 240 is not requiring anything that would result in a negative fiscal impact to the healthcare system or to any state agency or plan. Of the thirty-three states with enacted legislation similar to HB 240, not a single state has reported a negative fiscal impact.

At the federal level, CMS has recognized the fiscal benefits of this transparency. In their Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs Final Rule, CMS stated that "updating maximum allowable cost prices for drugs at least every 7 days generally should have a downward pressure on overall drug costs. Therefore we do not agree with the commenters that the requirement will necessarily increase costs."

HB 240 allows for a reasonable degree of transparency and reporting so that Alaska's small business owners and healthcare providers have access to pricing lists that accurately reflect the current pharmaceutical marketplace figures. This bill simply provides pharmacies with the information they need to determine what they will be paid for their services.

NCPA urges your support of HB 240 so that community pharmacists can better serve their patients without PBMs imposing unfair and burdensome requirements.

If you have any questions about the information contained in this letter or wish to discuss the issue in greater detail, please do not hesitate to contact me at alliejo.shipman@ncpanet.org or (703) 600-1179.

Sincerely,

Allie Jo Shipman

Allie Jo Shipman, PharmD
Associate Director, State Government Affairs

cc: Members of the House Labor and Commerce Committee