

April 7, 2020

Michael Consedine, Esq.  
Chief Executive Officer  
National Association of Insurance Commissioners  
444 North Capitol Street NW, Suite 700  
Washington, DC 20001

Dear Mr. Consedine:

I am writing on behalf of the National Community Pharmacists Association (NCPA). NCPA represents the interest of America's community pharmacists, including the owners of more than 21,000 independent community pharmacies across the United States. The healthcare system's response to COVID-19 requires coordination, collaboration, and necessary action across the continuum of care to prevail over this disease. The nation's independently owned community pharmacies are highly trained frontline healthcare providers and stand ready to assist in fighting the COVID-19 pandemic in all U.S. states and territories.

Community pharmacists are adapting their business practices to adjust to their patients' ever-changing needs during this outbreak. However, health plan and pharmacy benefit manager (PBM) restrictions prevent Americans we serve from receiving the best possible care. Many restrictions can and are being addressed by federal and state officials, and some plans and PBMs have taken proactive steps, but even those fall short of the overarching changes that are needed.

We ask you to urge your members to take action to remove barriers to care in their states so we can be fully prepared to meet the demand of those affected by COVID-19. We request that each insurance commissioner consider issuing directives that would require all health plans and PBMs conducting business in their state to take the following actions during the state of emergency:

- 1. Waive all signature and documentation requirements upon dispensing, delivering or mailing of a prescription;**
- 2. Suspend all forms of pharmacy audits;**
- 3. Eliminate restrictions on home delivery and mailing of prescriptions;**
- 4. Ensure pharmacy reimbursement amounts accurately reflect changes in drug pricing; and**
- 5. Eliminate restrictions on a patient's ability to utilize the in-network pharmacy of his/her choice.**

These recommended actions are critical for allowing Americans to receive care, implementing social distancing guidelines for the health and wellness of patients and pharmacy staff, and continuity of business operations. Several states have already protected patient access to pharmacy services by implementing these policies.

**Waive all signature and documentation requirements upon dispensing, delivering or mailing of a prescription**

A critical operational barrier our pharmacies are facing right now is signature requirements upon dispensing/delivering/ mailing of a prescription medication. In HHS Secretary Azar's request to governors, he requested their immediate action to, "Modify any laws or regulations that require a signature for delivering of pharmaceuticals to allow signature-less deliveries, which can help prevent contact between recipient and delivery personnel." In the CDC's broad guidance, and in their [Industry Guidance](#), they urge pharmacy staff who are filling/dispensing medications to implement social distancing and stay six feet away from others where possible (including not exchanging items such as pens, credit cards, etc.).

For the health, wellness, and safety of both the patients and the pharmacy staff, we strongly urge insurance commissioners to require plans/PBMs to remove ALL signature requirements for pharmacies. Though some plans and PBMs have taken steps to waive actual signatures during the state of emergency, documentation by the pharmacy of a waived signature is still required and there is no standardization of the documentation requirements across PBMs. Nor is it usually clear that these procedures are applicable to ALL lines of a plan/PBM's business.

Pharmacies are left to adhere to different signature documentation requirements for each plan/PBM and potentially different documentation requirements for each plan/PBM's Part D and non-Part D business. This creates an unmanageable process under which to care for patients and comply with the requirements and sets pharmacies up for future audit recoupments based on unreasonable requirements under the conditions. Thus, a total waiver of signature and related documentation requirements is appropriate.

[Arkansas](#), [Massachusetts](#), [Oklahoma](#), and [Texas](#) have already issued bulletins calling for plans/PBMs to waive signatures for prescription medications filled in those states.

**Suspend all forms of pharmacy audits**

All audits by plans/PBMs should be suspended during the state of emergency at the state level. This should include but not be limited to desktop audits, on-site audits, telephone audits, and inventory audits. The diversion of pharmacy personnel from their tireless efforts to care for patients during the unprecedented crisis to conduct audits undermines patient safety and healthcare. Additionally, on-site audits may impede efforts to satisfy social contact restrictions that have been implemented to ensure the safety of pharmacy personnel and their patients. Suspending all audits during this time will allow pharmacies to focus their energy on meeting the critical healthcare needs of the communities they serve.

[Arkansas](#), [Kentucky](#), [Ohio](#), [Oklahoma](#), and [Vermont](#) have issued directives requiring the suspension of pharmacy audits.

**Eliminate restrictions on home delivery and mailing of prescriptions**

Americans have been advised to limit unnecessary trips outside of their homes. Having their prescriptions delivered to their home can save a patient a trip to the pharmacy, thereby limiting his or her exposure to the coronavirus. Many community pharmacies already offer home delivery services, and the use of these services should be encouraged. However, some patients are denied access to home delivery services because of

restrictions placed by their plan/PBM. We ask your members to call on plans and PBMs to relax restrictions on home delivery and prescription mailing services so that community pharmacies can offer these much-needed services to all patients.

[Massachusetts](#), [Texas](#), and [West Virginia](#) have directed plans and PBMs to ensure there are no impediments keeping pharmacies from offering home delivery services.

#### **Ensure pharmacy reimbursement amounts accurately reflect changes in drug pricing**

During this unprecedented crisis, disruptions in the drug supply chain, drug shortages, and other factors are causing unpredictable and rapid fluctuations in drug acquisition costs. Additionally, due to drug shortages, pharmacists are increasingly forced to make generic and therapeutic substitutions to ensure patients can maintain their drug therapies. Unfortunately, plan/PBM reimbursement policies have not been keeping pace with the price fluctuations caused by these factors, frequently leaving pharmacies underwater on the prescriptions they dispense to their patients.

To ensure pharmacies can continue serving their patients, we ask your members to call on plans/PBMs to update reimbursement policies to account for changes in drug prices caused by factors associated with the COVID-19 outbreak. Specifically, plans/PBM should update maximum allowable cost (MAC) lists every 3 days. When drug shortages force a pharmacist to make a generic or therapeutic substitution, which may not be on a plan/PBM's formulary, the plan/PBM should reimburse for the drug at its true acquisition cost, as determined by a reliable, objective benchmark. For example, [Arkansas](#) requires PBMs to reimburse for a drug at a rate that is not below the drug's National Average Drug Acquisition Cost (NADAC). Louisiana, Kansas, Iowa and Mississippi all prohibit reimbursements below NADAC in their Medicaid managed care programs.

#### **Eliminate restrictions on a patient's ability to utilize the in-network pharmacy of his/her choice**

During this public health crisis, patients feel vulnerable and worried about their health. It is imperative that patients have the ability to seek the help of healthcare providers they trust. However, many patients are not given the opportunity to utilize the pharmacy of their choice. Instead, they are required by their plan/PBM to use a specific pharmacy, often a mail-order pharmacy. We ask that you urge your members to call on plans/PBMs to eliminate barriers that keep patients from utilizing the in-network pharmacy of their choice.

[Alaska](#), [Delaware](#), and [West Virginia](#) have directed plans/PBMs to respect patient choice regarding the provision of pharmacy services.

#### **Conclusion**

We have attached suggested language that would address these recommended actions. We encourage you and your members to review the language and consider implementing these policies in their states.

Throughout this outbreak, community pharmacists' commitment to patient care and their ability to adapt to the changing circumstances have been inspiring. NCPA asks you to work with your members to call on health plans and PBMs to similarly adapt business practices so that patients can continue accessing high-quality services from their community pharmacies during these uncertain times. Please contact me at [doug.hoey@ncpa.org](mailto:doug.hoey@ncpa.org) with any questions you may have about how your members can ensure patients continue having access to their trusted independent pharmacies during this urgent time.

Michael Consedine, Esq.

4/7/20

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Sincerely,

A handwritten signature in black ink, appearing to read "B. Douglas Hoey". The signature is fluid and cursive, with the first name "B." and last name "Hoey" clearly distinguishable.

B. Douglas Hoey, RPh, MBA  
Chief Executive Officer

Attachments: NCPA Model Language on Audit Suspensions  
NCPA Model COVID-19 Pharmacy Access Order

**Model EO/Regulatory/Legislative Language: Audit Prohibition**

This order pertains to all third-party administrators, including pharmacy benefit managers, health insurance companies, and other entities licensed pursuant to the laws of this state relating to insurance (collectively, Administrators). The provisions in this order are effective March 1, 2020 until there is no longer a declared public health emergency.

Governor XXXX declared a state of emergency in STATE to protect the well-being of RESIDENTS OF STATE from the dangerous effects of COVID-19, and directed state agencies to develop and implement procedures consistent with recommendations from the HEALTH DEPARTMENT designed to prevent or alleviate the public health threat.

As not to undermine current public health efforts to combat the spread of the coronavirus:

1. Administrators shall immediately allow and encourage all network pharmacies to utilize delivery methods that minimize face-to-face contact, including home, curbside, and mail delivery.
2. Administrators shall not conduct a pharmacy audit.
3. Future audits that cover the time period during the emergency must recognize any alterations or waivers of certain requirements on pharmacies by Administrators or federal, state, or local governments or agencies. Administrators are prohibited from recouping on any alterations or waivers of those certain requirements.
4. Administrators are prohibited from audit recoupments for clerical and scrivener errors on claims made during the emergency.

Provisions (1) and (2) are effective until there is no longer a declared state of emergency in response to COVID-19. Provisions (3) and (4) do not expire.

This order also applies to all plans under the STATE'S purview, including but not limited to Medicaid and the STATE Employee Health Benefits program.

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To ensure residents maintain access to prescription drugs and community pharmacy services during the state of emergency:

1. Administrators shall update their maximum allowable cost lists and any other pricing benchmarks used to determine pharmacy reimbursement rates at least once every three (3) days.
2. If, in the pharmacist's professional judgment, a drug supply shortage prevents a pharmacist from dispensing a drug as prescribed or in accordance with the Administrator's drug formulary and the pharmacist dispenses an alternative generic or therapeutically equivalent brand drug, the Administrator shall reimburse the pharmacy for the ingredient drug product component at a rate that is not less than the National Average Drug Acquisition Cost (NADAC) for the dispensed drug or, if the NADAC is unavailable, the Wholesale Acquisition Cost (WAC), plus the applicable professional dispensing fee under the plan.
3. Administrators shall suspend refill-too-soon edits.
4. Administrators shall not restrict a covered person's ability to select any pharmacy that is in the Administrator's pharmacy provider network, regardless of whether the network is a preferred provider network.

These provisions are effective until there is no longer a declared state of emergency in response to COVID-19.

This order also applies to all plans under the STATE'S purview, including but not limited to Medicaid and the STATE Employee Health Benefits program.