February 27, 2020
The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee
241 House Office Building
6 Bladen Street
Annapolis, MD 21401

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT OF HB 1273

Dear Chair Pendergrass, Vice-Chair Pena-Melnyk, and members of the Health and Government Operations Committee:

Thank you for giving me the opportunity to testify in support of House Bill 1273, which would strengthen Maryland’s laws addressing costly practices conducted in the course of a PBM audit of a pharmacy. My name is Matthew Magner, and I am here on behalf of the National Community Pharmacists Association. NCPA represents the interest of America’s community pharmacists, including the owners of more than 21,000 independent community pharmacies across the United States and 391 independent community pharmacies in Maryland.

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.

Maryland is not the only state to recognize that reform is necessary. The Centers for Medicare and Medicaid Services has found that pharmacy audits 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... at all; for example, because it is fraudulent.”

Realizing the need to control these audit practices, the General Assembly of Maryland enacted pharmacy audit protections. Despite these protections, PBMs continue to use audits to inappropriately recoup money from pharmacies. One issue is that pharmacy audits often occur after the time period during which a pharmacy can reverse and rebill a claim. In that scenario, if an audit turns up an error, the pharmacy does not have the opportunity to correct the mistake.

Keep in mind that the pharmacy claims that are being audited by the PBM are ones that have already been approved by the PBM when they were initially submitted. Therefore, the pharmacy

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has been proceeding on the assumption that these claims are fully compliant and non-controversial and has not “set aside” the reimbursement received from the PBM for these claims based on the fact that there could be a discrepancy. Allowing the PBM to reach back into the distant past to challenge previously adjudicated claims places the pharmacy at a distinct financial disadvantage and diminishes the pharmacists’ ability to accurately verify their prescription records with the necessary healthcare practitioners.

HB 1273 would help address this issue by shortening the audit period to 11-months. This change will make it more likely that a pharmacy has the opportunity to correct any mistakes that are found during an audit. This will ensure the pharmacy is appropriately reimbursed for their services, and patients and plan sponsors will still be protected from mistakenly being overcharged.

I want to point out that this bill would not change the existing law that exempts from these protections “an audit that involves probable fraud or willful misrepresentation by a pharmacy or pharmacist.” Therefore, this bill will not impede a PBM’s authority to identify or investigate true cases of fraud, waste, and abuse.

NCPA urges your support for HB 1273 because it will strengthen Maryland’s reasonable standards to ensure that PBM audit abuses are curtailed without undermining the ability to identify fraud or legitimate errors. Thank you, again, for your time, and I would be happy to answer any questions.

Sincerely,

Matthew Magner
Director, State Government Affairs

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2 Md. Code Ins. § 15-1629.