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June 3, 2025

Chairwoman Ray, Vice Chairman LaRe, Ranking Member Brent and members of the House General Government Committee,

My name is David Burke, and I serve as the Executive Director of the Ohio Pharmacists Association. I am before you today in support of House Bill 229. As you are likely aware, Pharmacy Benefit Mangers (PBM) have been an item of discussion for years at the state and Federal level. Acting as true middleman, the three main PBMs now control 80% of the pharmacy networks dictating price, cost, and network access with little no know oversight, accountability or regulation. Whether a patient, payer or pharmacy, the price of medications dictated by the PBMs has about as much transparency as a mafia transaction. I apologize if I have belittled the mafia in that comparison.

At the direction of the US Congress, the General Accounting Office conducted a study on state regulations of PBMs. I have attached the summary of those findings. I urge you to review the entire study. House Bill 229 was derived because of this study with the primary goal of transparency. Working with interested parties in both the PBM market and regulators, I'd like to highlight some of the provision in House Bill 229 and share why payers, employers and patients deserve objective transparency rather than subjective PBM numbers.

The legislation removes PBMs from their current placement within the Third Party Administrator (TPA) chapter of code and sets them within their own chapter. This provides a framework separate from standard claims processors such as your dental and vision benefit which do not assume risk or the price maker/price taker role that PBMs assume. It continues the licensure process, enhances records retention, requires standardized report criteria, sets a narrow agency and defined fiduciary duty, excludes ERISA plans, and allows the Superintendent of Insurance examination authority of PBM books and records while maintaining confidentially. While mirroring most existing TPA provisions, the legislation creates or enhances the Department of Insurance's ability to oversee PBMs in a truly meaningful way without encumbering plan design, increasing costs, or inducing burden.

Be clear, this legislation is not about pharmacies or pharmacists. It is about bringing transparency to a market sector that has been monopolized and then abused by an overly complicated scheme where a middleman now can determine both cost and

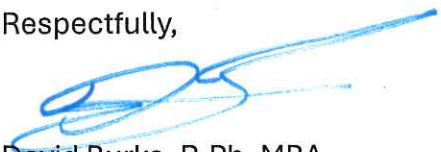
reimbursement. This has a direct effect on growing premiums paid by Ohio employers. To that point and after winning an $80 million lawsuit for overcharges from a PBM, Ohio Medicaid moved away from the traditional PBM model and to transparent third party administrative model we have today. In the first two years, Ohio has saved $140 million demonstrating how costly the lack of transparency truly is. As the commercial market fills nearly double the prescription volume of Medicaid, Ohio business could enjoy $280 million in savings using transparency as a savings tool over the same two-year period.

Congress recently passed parallel legislation which now sits before the US Senate. On this issue, Senate Judiciary Chairman Chuck Grassley said, "Americans are fed up... they're eager for Congress to act to put a stop to shady PBM practices," and referred to PBMs as a 'moral obscenity' just last month.

The legislation before you does not set cost, payment, or premium. It creates much needed transparency and uniformity in reporting revenue and expenditures in the pharmacy benefit that do not exist today: no more and no less. While I am sure the stories of woe from the PBM lobbyist and their minions will spin tales of fear and doubt, I only ask you to return to your district, stop by a small business or ask an individual who pays for their own insurance what information they get from their PBM. Ask them if they even had a choice in their PBM, whether or not to use spread pricing, or how their benefit is administered or how they determined cost effectiveness PBM to PBM when selecting a plan.

House Bill 229 gives transparency to consumers who deserve the ability to make an effective apples to apples value comparison within their pharmacy benefit. It provides regulatory oversight to ensure consumers of the pharmacy benefit have the same protections they enjoy within their other health benefits. I strongly urge the passage of this legislation.

Respectfully,



David Burke, R.Ph, MBA
Executive Director
Ohio Pharmacists Association

March 2024

PRESCRIPTION DRUGS

Selected States' Regulation of Pharmacy Benefit Managers

GAO Highlights

Highlights of GAO-24-106898, a report to congressional requesters

Why GAO Did This Study

Prescription drug spending by private health plans climbed to nearly $152 billion in 2021, an 18 percent increase from 2016. Health plans generally rely on PBMs to process claims, develop pharmacy networks, and negotiate rebates from drug manufacturers. However, some researchers and stakeholders have questioned certain PBM practices, such as PBMs retaining a share of the rebates and use of spread pricing. In response, states have begun to enact legislation addressing PBMs, with all 50 states having enacted at least one PBM-related law between 2017 and 2023.

GAO was asked to review states' regulation of PBMs serving private health plans. Among other things, this report describes actions selected states have taken to regulate PBMs, and lessons learned that state regulators identified for PBM regulation.

GAO focused on a selection of five states that have enacted a wide range of PBM laws, based on existing inventories maintained by national policy research organizations, such as the National Conference of State Legislatures. GAO reviewed states' laws and interviewed state regulators as well as a variety of other stakeholders. These included state pharmacy associations and state health plan associations in each of the five states, and four national organizations representing interests of PBMs, patients, employers, and drug manufacturers, respectively.

View GAO-24-106898. For more information, contact John E. Dicken at (202) 512-7114 or dickenj@gao.gov.

What GAO Found

Private health plans contract with pharmacy benefit managers (PBM) to administer their prescription drug benefits and help control costs. Each of the five states selected for review—Arkansas, California, Louisiana, Maine, and New York—enacted a variety of laws to regulate PBMs.

- **Fiduciary or other "duty of care" requirements.** Four of the five states (California, Louisiana, Maine, and New York) enacted laws to impose a duty of care on PBMs. The laws varied from imposing a fiduciary duty—that is, a requirement to act in the best interest of the health plan or other entity to which the duty is owed—to what state regulators described as "lesser" standards such as a requirement to act in "good faith and fair dealing."
- **Drug pricing and pharmacy reimbursement requirements.** The five states enacted a variety of laws relating to drug pricing and pharmacy payments, such as laws limiting PBMs' use of manufacturer rebates and their ability to pay pharmacies less than they charge health plans—a practice referred to as "spread pricing."
- **Transparency, including licensure and reporting requirements.** To increase the transparency of PBM operations, the five states enacted laws that require PBMs to be licensed by or registered with the state, or both, and to report certain information such as drug pricing, fees charged, and the amounts of rebates received and retained.
- **Pharmacy network and access requirements.** The five states also enacted laws regarding pharmacy networks and patient access. Examples include laws prohibiting discrimination against unaffiliated pharmacies and limiting patient co-pays charged by PBMs.

The regulators GAO interviewed from selected states described lessons learned regarding PBM regulation. Examples include the following.

- Regulators in four states said that providing regulators with broad regulatory authority was more effective than enacting specific statutory provisions. Doing so allowed regulators to address emerging issues without new legislation, according to regulators from one state.
- Some regulators also stressed the need for robust enforcement of PBM laws and effective penalties to enforce them. Two pharmacy associations GAO interviewed concurred with these views, while a health plan association said that monitoring is needed to ensure compliance with PBM requirements. Three regulators also said that clear reporting requirements and definitions helped ensure consistent enforcement.

The Department of Labor provided technical comments on a draft copy of this report, which GAO incorporated as appropriate.