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Assembly Bill 7 Testimony

Thank you, Chairman Sanfelippo and Committee Members, for the opportunity to testify in favor of Assembly Bill 7. This bill will improve the health of our constituents by putting an end to unfair business practices and make the purchase of prescription drugs affordable and accessible.

Last session, this crucial bill had overwhelming bipartisan support, and it is no less critical today. Our citizens are struggling with unemployment, business setbacks, and business closures. The last thing they need is to pay more for their medications or lose their local pharmacy due to unfair business practices.

Access to medication is very personal to me. It's why I became aware of Pharmacy Benefit Managers in the first place. Last year, my wife testified about her great difficulty obtaining the medication that her doctor prescribed. She spent 23 hours on the phone with our PBM and I was about to take her to the emergency room before our PBM finally relented and covered the medication her physician had prescribed. Not everyone has the tenacity to advocate for themselves. How many of your constituents are suffering because they've been denied medications that had previously been prescribed and covered?

This bill is essentially the same as the bill you heard in this committee on February 12 of last year. Let me go over the main provisions of the bill that were agreed upon last session.

- **Prohibiting Gag Clauses:** The pharmacist is allowed to tell the patient there is a lower cost option to paying for a prescription drug.
- **Cost sharing limitation (Clawbacks):** The co-pay charged to a patient cannot be more than the amount that the pharmacy would charge if the patient was not using insurance, the "cash" price.
- **Rebate Transparency:** PBMs claim to save money by contracting with drug manufacturers for a rebate (discount or kickback) on the drugs they include in the formulary. Each PBM will submit a confidential annual report to OCI indicating the amount of rebates and the amount they kept instead of passing it on to the health plan or patients. These reports will be protected as trade secrets.

- **Pharmacy Transparency:** Pharmacies must post signage informing customers of legal drug substitutions and how to access the FDA list of those approved substitutions.
- **Drug Formulary Changes:** PBMs must provide a 30 day written notice if a drug is removed from the formulary or increases in cost. They must also provide information on how to request an exception. If they add a drug of equal or lower cost to the formulary, no notice is required.
- **Retroactive Claim Reduction (Clawbacks):** After a pharmacy has filled a prescription at an agreed-upon price, the PBMs will no longer be allowed to unilaterally change the reimbursement amount.
- **Fair Audit Provisions:** Only audits for waste, fraud, and abuse will be allowed, putting an end to predatory audits aimed at high-return clerical errors.
- **Licensure with OCI:** This bill requires PBMs to be licensed annually with OCI. Through the rule-making process, OCI will allow for adequate time for PBMs to comply with their requirements.

I'd like to also mention some of the key provisions we negotiated away to get to this place.

- **Consistent copays for the patient:** This bill allows PBMs to continue to use financial incentives to drive patients to mail order, specialty, or retail pharmacies owned by the PBM.
- **Keeping drugs on the formulary for the benefit year:** Under this bill, PBMs are still allowed to make changes to the approved list of drugs after patients have selected the plan that covers the drug they need.
- **Published transparency reports:** Information on how PBMs pass on or keep the rebates they get from drug manufacturers, will not be available to the public. This bill only has confidential reports to OCI.

The insurance and pharmaceutical industry is complex and opaque. While they are responsible to their stockholders and their consciences, we are responsible to guard the health and pocketbooks of our constituents. I would never want to keep a legitimate business from making a fair profit. On the other hand, it is our responsibility to protect the citizens of Wisconsin from any bad actors that would engage in disreputable business practices.

In closing, it is my privilege to again work with this bipartisan group of legislators to protect the health of our constituents.



MARY FELZKOWSKI

STATE SENATOR • 12TH SENATE DISTRICT

Testimony on Assembly Bill 7

Assembly Committee on Health

February 10, 2021

Good afternoon Chairman Sanfelippo and committee members, and thank you for the opportunity to testify on Assembly Bill 7, relating to regulation of Pharmacy Benefit Managers. The bill before you today is the compromise reached at the end of last session amongst all of the stakeholders involved. I am grateful to my co-author, Rep. Michael Schraa, who has worked tirelessly on this legislation over the last two years.

Pharmacy Benefit Managers (PBMs) are businesses that administer and manage prescription drug benefits, typically on behalf of health insurers. PBMs create formularies, contract with pharmacies, and process and pay prescription drug claims. Because of the contracts they negotiate with manufacturers, health plans, and pharmacies, PBMs play a crucial role in the prescription drug supply chain, including influencing pricing and drug selection.

PBMS were initially created to help keep prescription drug prices affordable. However, we have brought forward AB 7 today because some current PBM practices are having an adverse effect on pharmacies and patients, and you will hear examples of both during testimony today. The purpose of this bill is to put regulations in place that help PBMs operate as originally intended to lower out-of-pocket drug costs and increase access to prescribed medications, while also protecting patients and pharmacies.

The bill accomplishes the following provisions:

Prohibiting Gag Clauses: This bill prohibits a PBM from banning a pharmacist from informing a patient that there is a lower cost option to paying for a prescription drug.

Clawbacks: Sometimes, a patient's copay is more than the cost of the medication if the patient were to pay cash. For example, a patient could have a \$15 copay for a medication with a cash price of \$5, and the PBM would charge the patient \$15 – driving up healthcare costs and forcing patients to spend more of their hard-earned money. This bill prohibits PBMs from charging a copay greater than the amount that the pharmacy would charge if the patient was not using insurance.

Rebate Transparency: PBMs contract with drug manufacturers, receiving a rebate (discount or kickback) for including drugs in their formulary. Each PBM will submit an annual report to the Office of the Commissioner of Insurance (OCI) indicating the amount of rebates received from pharmaceutical manufacturers and the portion of that rebate that was retained by the PBM and not passed through to the health plan or their customers. These reports will be protected as trade secrets.

Pharmacy Transparency: Pharmacies must post signage informing customers of legal drug substitutions and how to access the FDA list of approved substitutions.

Drug Formulary Changes: Decisions about prescription medication regimens should be made between prescribers and patients. Patients that have been taking the same prescription drug for years should not be at-risk of losing access to these drugs, or be charged more to obtain them, because of a decision that financially

benefits a PBM. This bill requires a 30 day written notice of removal or increased cost along with information on how to request an exception—unless an equal or lower cost alternative is added to the formulary.

Fair Business Practices: PBMs often practice retroactive claim reduction. After a pharmacy has filled a prescription at an agreed-upon price, the PBM changes the reimbursement amount. This practice will not be allowed unless there was some impropriety on the part of the pharmacy.

Fair Audit Provisions: Predatory audits make it difficult for responsible pharmacies to continue to stay in business to serve their communities. Under the bill, PBMs must give two weeks' notice before conducting an audit at a pharmacy. The audit period cannot exceed a lookback period of two years, and clerical or record-keeping errors shall not be subject to the recoupment of funds unless the errors are intentionally fraudulent.

Licensure with OCI: This bill requires PBMs to be licensed annually with OCI. The insurance commissioner can also require reports and conduct examinations to ensure that PBMs are acting in the best interests of the consumer, just like they can with insurance companies.

The authors have introduced an amendment to address the effective date of the bill. Last session, if the bill had not been timed out due to COVID, the bill would have taken effect in June of 2021. The amendment would change the effective date of the bill to the beginning of the next plan year, January 1, 2022, except for three provisions: gag clauses would be upon enactment, while the clawbacks and audit provisions would be in effect on June 30, 2021.

As a legislator who serves a very rural district across eleven counties, I can tell you firsthand that independent pharmacies are crucial for access to health care for my constituents. This bill will go a long way to helping these pharmacies stay in business and continue to serve our communities. It will also put necessary parameters in place that ultimately best serve the patient.

Thank you again for your time. I am happy to answer any questions you may have.



Pharmacy Society
of Wisconsin

TO: Assembly Committee on Health

FROM: Sarah Sorum, PharmD
Chief Executive Office & Executive Vice President
Pharmacy Society of Wisconsin

DATE: February 10, 2021

SUBJECT: **Testimony in Favor of Assembly Bill 7**

Thank you, members of the Assembly Committee on Health, for the opportunity to provide testimony in support of Assembly Bill 7. My name is Sarah Sorum and I am the CEO of the Pharmacy Society of Wisconsin. I am also a pharmacist who cares deeply for patients. While many pharmacists wish they could be here to testify on this important piece of legislation, they are at the front lines playing a key role in COVID-19 vaccination and testing efforts. I'm pleased to be joining you on their behalf.

This bill takes a number of much-needed steps toward increasing transparency and accountability for Pharmacy Benefit Managers (PBMs).

Pharmacy benefit managers, or PBMs, play a crucial role in prescription drug benefits. In fact, PBMs manage plans for nearly 95% of Americans with prescription drug coverage¹. PBMs serve as an intermediary between health plans and pharmacies to create formularies of preferred medication lists, negotiate with drug manufacturers for discounts and rebates, negotiate with pharmacies to establish networks for dispensing drugs, and process prescription claims at the point of sale for more than 200 million Americans. In addition, many PBMs own and operate mail order pharmacies.

Even though PBMs manage numerous prescription plans funded by taxpayer dollars and despite the fact that all other aspects of health care are closely regulated, there are almost no regulations at the state level in Wisconsin specific to pharmacy benefit managers. Over the past decade, more than thirty states have passed legislation to regulate specific PBM practices.

PBMs were created to bring savings to health plans and their members by reducing administrative costs, validating patient eligibility, and negotiating costs between pharmacies and health plans; however recent studies have demonstrated that many PBMs operate with a lack of transparency and have taken advantage of their middleman position between the health plan and pharmacy provider; additionally, some PBMs have implemented business practices that are unfair to pharmacies and patients.

¹ AIS Market Data, Pharmacy Benefit Management, PBM Market Share, Top 25 Pharmacy Benefit Management Companies and Market Share by Membership. 2000-2011 Survey Results: Pharmacy Benefits Trends & Data.

This bill seeks to address a number of problems that pharmacies experience due to this lack of transparency and accountability.

1. **MAC Pricing:** Due to the secretive nature of PBM MAC pricing list, the pharmacy often is unaware what the reimbursement of a drug will be until time of claim adjudication. Often, if there has been an increase in the drug cost and a reimbursement rate that does not catch up to the increased cost to the pharmacy, the pharmacy will lose money on the claim. Despite existing state laws relating to MAC transparency, efforts to ask a PBM for reconsideration of MAC pricing have been returned with a statement from the PBM of "Pricing per contract." While Wisconsin has a MAC transparency law on the books, it is not currently being enforced. **This bill would give OCI greater authority to enforce the existing MAC transparency law.**
2. **Audits:** When a PBM audits the pharmacy and asks to see a prescription, they often recoup for a clerical error (missing date, DEA number, etc.) Often, the PBM recoups all money for the prescription. **This bill prohibits recoupments for clerical errors when the service was lawfully and correctly provided and limits recoupments in other circumstances when the prescription was lawfully dispensed.**
3. **Transparency:** PBMs negotiate rebates for prescriptions that are dispensed. **This bill requires PBMs to report rebates it receives and does not pass along to consumers to OCI to provide more transparency to this process.**
4. **Any Willing Provider:** Wisconsin is an any willing pharmacy state. If a pharmacist is willing, then they should be allowed into a PBM contract. We have heard from pharmacists who have called several PBMs to ask to join a network or enter the mail order contract only to be told "that network is closed," or "apply next year." **This bill would give OCI greater authority to enforce the existing any willing pharmacy law if a pharmacist feels they are being excluded from a network for which they meet the contractual requirements.**
5. **Gag Clauses & Clawbacks:** When PBMs charge patients co-pays that are more expensive than the pharmacy's price for the same medication, pharmacists have been banned by contract from informing the patient of the lower cost option. Practice such as these force patients to spend more money out-of-pocket when using insurance than they would spend without using insurance. **This bill prohibits PBMs from banning or penalizing pharmacists from informing patients of a lower-cost option to purchase medications - for example, if paying with cash is less expensive than the patient's copay. Additionally, PBMs cannot require a patient to pay an amount that is greater than the cost of the drug or the amount the patient would pay if using cash.**

While the bill the committee is hearing today is narrower in scope than the original bill that was introduced last session, the Pharmacy Society of Wisconsin is appreciative of the efforts that the bill's authors and other legislators have made to find common ground that provides greater transparency and accountability of pharmacy benefit managers for pharmacies, patients, and policymakers.



Pharmacy Society
of Wisconsin

Unfortunately, due to COVID-19 and the early termination of the legislative session last year, there are provisions in this bill that will now be effective only as early as May, 2022, rather than the anticipated effective date of June, 2021 had the bill passed late last session. This 11-month difference is another 11-months for the guardrails this bill seeks to establish to be implemented, which are designed to help pharmacies, patients, and employers alike. We request that, at minimum, the provisions relating to gag clause, clawbacks, and fair audit reform are implemented immediately upon enactment.

Thank you for the opportunity to provide testimony on AB 7. I am happy to answer any questions you may have.

Pharmacy Name: WATERTOWN HOMETOWN PHARMACY

Rx #	Drug Name	Fill Date	Disc Code	Billed Qty	Billed Day Supply	Val Qty	Val Day Supply	Initial Over Payment	Paid Amount	Comments
705209	NOVOLOG FLEXPEN	02/27/2019	3J	15,000	30.00	0.000	0.00	\$ 520.36	\$ 520.36	
705209	NOVOLOG FLEXPEN	03/25/2019	3J	15,000	30.00	0.000	0.00	\$ 520.36	\$ 520.36	
719301	AZOPT	02/15/2019	1N	10,000	30.00	10,000	37.00	\$ 0.00	\$ 266.17	
720208	NOVOLOG FLEXPEN	02/22/2019	1N,4K	15,000	30.00	15,000	34.00	\$ 0.00	\$ 545.36	
720208	NOVOLOG FLEXPEN	07/02/2019	1N,4K	15,000	30.00	15,000	34.00	\$ 0.00	\$ 545.36	
720208	NOVOLOG FLEXPEN	08/06/2019	1N,4K	15,000	30.00	15,000	34.00	\$ 0.00	\$ 543.64	
720208	NOVOLOG FLEXPEN	09/25/2019	1N,4K	15,000	30.00	15,000	34.00	\$ 0.00	\$ 543.64	
729210	BASAGLAR KWIKPEN U-100	03/28/2019	1N	15,000	30.00	15,000	68.00	\$ 0.00	\$ 313.70	
729210	BASAGLAR KWIKPEN U-100	07/13/2019	1N	15,000	30.00	15,000	68.00	\$ 0.00	\$ 313.70	
729210	BASAGLAR KWIKPEN U-100	10/22/2019	1N	15,000	30.00	15,000	68.00	\$ 0.00	\$ 312.67	Final DAW pricing adjustments to be made by Medimpack
730679	ADVAIR DISKUS	04/16/2019	1K	60,000	30.00	0.000	0.00	\$ 304.62	\$ 304.62	Final DAW pricing adjustments to be made by Medimpack
730679	ADVAIR DISKUS	08/21/2019	1K	60,000	30.00	0.000	0.00	\$ 303.62	\$ 303.62	Final DAW pricing adjustments to be made by Medimpack
730679	ADVAIR DISKUS	10/08/2019	1K	60,000	30.00	0.000	0.00	\$ 298.62	\$ 298.62	Final DAW pricing adjustments to be made by Medimpack
730679	ADVAIR DISKUS	02/13/2020	1K	60,000	30.00	0.000	0.00	\$ 303.62	\$ 303.62	Final DAW pricing adjustments to be made by Medimpack
730679	ADVAIR DISKUS	03/30/2020	1K	60,000	30.00	0.000	0.00	\$ 303.62	\$ 303.62	Final DAW pricing adjustments to be made by Medimpack
732815	NOVOLOG FLEXPEN	05/10/2019	3J	15,000	30.00	0.000	0.00	\$ 520.36	\$ 520.36	
732815	NOVOLOG FLEXPEN	06/21/2019	3J	15,000	30.00	0.000	0.00	\$ 520.36	\$ 520.36	
733082	JANUMET	05/14/2019	1X	60,000	30.00	0.000	0.00	\$ 391.84	\$ 391.84	
734704	BREO ELLIPTA	07/08/2019	4U	180,000	30.00	60,000	30.00	\$ 681.97	\$ 1022.95	
737188	XULANE	07/05/2019	1N	9,000	62.00	9,000	84.00	\$ 0.00	\$ 325.73	
748093	NOVOLOG FLEXPEN	11/15/2019	1N	15,000	30.00	15,000	34.00	\$ 0.00	\$ 543.64	
748093	NOVOLOG FLEXPEN	12/18/2019	1N	15,000	30.00	15,000	34.00	\$ 0.00	\$ 543.64	
748093	NOVOLOG FLEXPEN	02/12/2020	1N	15,000	30.00	15,000	34.00	\$ 0.00	\$ 543.64	

ity: 60

PS: 60 EA

Remaining: 0 0 EA

0

Product Selection Indicated

Labels:

1

0 - No Product Selection Indicated

- 1 - Substitution Not Allowed by Prescriber
- 2 - Substitution Allowed-Patient Requested Product Dispensed
- 3 - Substitution Allowed-Pharmacist Selected Product Dispensed
- 4 - Substitution Allowed-Generic Drug Not in Stock
- 5 - Substitution Allowed-Brand Drug Dispensed
- 6 - Override

- 7 - Substitution Not Allowed-Brand Drug Mandated by Law
- 8 - Substitution Allowed-Generic Drug Not Available in Market
- 9 - Substitution Allowed By Prescriber but Plan Requests Brand

ments:

EPIGATE

Where the Money Really Goes

Pharmacists United for TRUTH & TRANSPARENCY



DEMAND TRANSPARENCY



HUMALOG

Where the Money Really Goes

Pharmacists United for TRUTH & TRANSPARENCY



DEMAND TRANSPARENCY

*As reported by Eli Lilly 3/24/2019.

**Conservative estimate, actual price may be closer to \$1. Most pharmacies in contact with PUTT have reported losses on all insulin dispensed due to below-cost reimbursements.



CVS' PBM (Caremark) consistently pays its own CVS retail pharmacies more than it pays other independent pharmacies.

**LOCAL
PHARMACIES**

RECEIVED
\$28.27

**ARIPIPIRAZOLE
20 MG
30 TABLETS**
Take one daily
for depression.

**CVS
pharmacy**

RECEIVED
\$512.83

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: ARKANSAS BLUE CROSS COMMERCIAL HEALTH PLANS, DATA COLLECTED FEB 2018

CVS' PBM (Caremark) consistently pays its own CVS retail pharmacies more than it pays other independent pharmacies.

**LOCAL
PHARMACIES**

RECEIVED
\$909.38

**TEMOZOLOMIDE
100 MG
20 TABLETS**

Use as directed for
cancer treatment.

**CVS
pharmacy**

RECEIVED
\$3,940.22

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: ARKANSAS BLUE CROSS COMMERCIAL HEALTH PLANS, DATA COLLECTED FEB 2018

PBM UNFAIR BUSINESS PRACTICES

CVS Caremark (the CVS PBM) routinely profits through the use of SPREAD PRICING.

DRUG COST \$17.56

**LOCAL
PHARMACIES**

RECEIVED
\$7.60
PHARMACY LOSS
(-\$9.96)

**GUANFACINE ER
2 MG
30 TABLETS**

Take daily to
treat ADHD.

**CVS
caremark™**

CHARGED PLAN
\$121.55
PROVIDED NO DRUG,
JUST THE
PROCESSING FEE

**CVS/CAREMARK SPREAD
\$113.95**

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: FLORIDA MEDICAID MCO PLAN, 2017

PBM UNFAIR BUSINESS PRACTICES

CVS Caremark (the CVS PBM) routinely profits through the use of SPREAD PRICING.



**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: FLORIDA MEDICAID MCO PLAN, 2017

Example 1 - Lack of Information
Misc. fees with no reason – “Not Specified”

5102051	\$15,199.35
Forwarding Balance	-\$8.36
Manual WriteOff	\$619.13
Misc Not Specified	\$5,184.80
Overpayment	-\$21.25
Performance Network Fee	\$1,102.59
Transaction Fee	\$2,817.65
Weekly Portion of DIR Recouped - Caremark	\$5,504.79

Example 2 – Lack of Information
Misc. fees with no reason – “Not Specified”

Wisconsin Med...	5101287	11/17/2020	\$10.99	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$14.31	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$10.99	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	\$14.31	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$498.18	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	\$16.93	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$27.37	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$16.34	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$16.93	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	\$27.37	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	\$16.34	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/17/2020	-\$316.87	Misc Not Specified	501916...	11/18/2020
Wisconsin Med...	5101287	11/30/2020	-\$193.36	Misc Not Specified	501924...	12/01/2020
Wisconsin Med...	5101287	11/30/2020	\$15.37	Misc Not Specified	501924...	12/01/2020
Wisconsin Med...	5101287	11/30/2020	-\$48.43	Misc Not Specified	501924...	12/01/2020

Example 3 – Payments & Claw backs

Transaction Ledger x

Claim Information						
Parent PBM	NABP	Fill Date	Prescription #	Co Pay	Total Due	Total Paid
OptumRx	5136127	8/15/2020	6040049	\$167.52	\$0.00	\$0.00

Payment Admin Information			
Status	Monetary Amount	Posted By	Post Date
Complete	N/A	Jessica Howle	1/15/2021

Transactions for 8/15/2020 Fill Date + Add

Type	PBM	BIN	PCN	Group	OCC	Auth #	Total	Post Date	Trans/Pay Date	Check #
835 - 3 rd Party Payment	Change Healthcare						\$2.50	1/15/2021	1/14/2021 12:00:00 AM	6376199
Overpayment	OptumRx						-\$2.50	1/15/2021	11/20/2020 12:00:00 AM	
Overpayment	OptumRx						\$2.50	11/24/2020	11/20/2020 12:00:00 AM	
835 - 3 rd Party Payment	Change Healthcare						-\$2.50	11/21/2020	11/20/2020 12:00:00 AM	6345149
835 - 3 rd Party Payment	Change Healthcare						\$100.00	10/24/2020	10/23/2020 12:00:00 AM	6329325
Manual Claim	Change Healthcare						-\$100.00	11/23/2020	9/25/2020 12:00:00 AM	
Manual Claim	Change Healthcare						\$100.00	9/28/2020	9/25/2020 12:00:00 AM	
835 - 3 rd Party Payment	Change Healthcare						-\$100.00	9/26/2020	9/25/2020 12:00:00 AM	6308961
835 - 3 rd Party Payment	OptumRx						\$16.84	9/15/2020	9/14/2020 12:00:00 AM	121000242190429
B2A - Reversed Claim	OptumRx	610279	9999	UHEALTH	0	202283588422265999	-\$116.84	9/4/2020	9/2/2020 1:35:49 PM	
835 - 3 rd Party Payment	OptumRx						-\$16.84	8/25/2020	8/24/2020 12:00:00 AM	121000242184470
B1P - Payable Claim	OptumRx	610279	9999	UHEALTH	0	202283588422265999	\$116.84	8/17/2020	8/15/2020 11:58:17 AM	

12 Transaction(s)

Balance: \$0.00



To: Members, Assembly Committee on Health
From: Rebecca Hogan, on behalf of the Alliance of Health Insurers
Mary Haffenbredl, on behalf of America's Health Insurance Plans
Tim Lundquist, on behalf of the Wisconsin Association of Health Plans
Date: February 10, 2021
Re: Written testimony on AB 7 – amendment request

The Alliance of Health Insurers (AHI), America's Health Insurance Plans (AHIP) and the Wisconsin Association of Health Plans (WAHP) are nonprofit advocacy organizations improving consumer access to affordable health insurance in Wisconsin, both via the private sector and public programs, and are committed to market-based solutions that improve affordability, value, access and well-being for consumers.

Our members and employers work with pharmacy benefit managers (PBMs) because they attempt to mitigate increasing costs by using their expertise and technology solutions to administer certain essential functions of a prescription drug benefit for health plans by:

- Using clinically based services to reduce medication errors, achieve higher rates of medication adherence, and improve health outcomes.
- Negotiating directly with manufacturers and pharmacists to lower total drug costs. The level of comparable volume and cost reductions PBMs can generate cannot be achieved by many health plans, most employers, or individuals.
- Implementing cost-saving strategies that include discount pharmacy networks, incentives to use therapeutic alternatives, formulary management (including manufacturer rebates), mail-order pharmacies, drug-use reviews, and disease management.
- Educating their consumers about safe, effective, and lower cost generic drugs.

AHI, WAHP and AHIP sincerely appreciated the opportunity to work through issues with policymakers last session to ensure PBM reform did not inadvertently raise drug costs. Instead, the negotiated compromise:

- Reaffirms a pharmacy's ability to inform an enrollee under the policy or plan of the lowest cost option for their drug.
- Requires a pharmacy to have available to the public a listing of the retail price, updated monthly or more often, of the 100 most prescribed prescription drugs available for purchase at the pharmacy.
- Requires a PBM to be licensed with the Office of the Commissioner of Insurance (OCI) or to have an employee benefit plan administrator license under current law.
- Clarifies when a PBM can retroactively deny a pharmacy or pharmacist's claim.
- Requires PBMs to report aggregate rebate amounts that the PBM received from all pharmaceutical manufacturers but retained and did not pass through to health benefit plan sponsors and the percentage of the aggregate rebate amount that is retained rebates.

Unfortunately, the bill's original effective date of 14 months from last session's agreement was removed and replaced by an immediate effective date. An immediate effective date for this type of reform is not possible and we are interested in partnering with policymakers to develop a more feasible implementation timeline. We have a joint goal to address the rising cost of prescription drug medications and offer affordable plans to employers and our enrollees.

Thank you for this opportunity to submit testimony today.



Coalition of Wisconsin Aging **& Health** Groups
Financial Empowerment – Personal Advocacy – Victim Rights

The Coalition of Wisconsin Aging and Health Groups is a nonprofit, nonpartisan, statewide membership organization that was founded in 1977.

“Advocating for all Generations”

2/10/2021

Coalition of Wisconsin Aging and Health Groups (CWAG) and Wisconsin Pharmacy Patient Protection Coalition (WPPPC) Testimony in Support of AB 7

Assembly Committee on Health

Chair Sanfelippo, Vice Chair Summerfield, members of the Committee, thank you for the opportunity to speak today. I'm Rob Gundermann, President and CEO of the Coalition of Wisconsin Aging and Health Groups and Chair of the Wisconsin Pharmacy Patient Protection Coalition. We strongly support AB 7, as there are several provisions in the bill, such as the removal of the gag clause on pharmacists, that are important to our Coalition partners.

Gag clauses are being used to bar pharmacists from telling consumers when it would cost less to pay cash for a prescription than paying the copayment on their insurance. People deserve to know the lowest price they can pay for their medications at their pharmacy and gag clauses imposed by PBMs are preventing this. The provision in this bill preventing the use of gag clauses corrects this problem and will enable people to pay less for their prescriptions and will save them money.

This legislation also addresses the issue of drug substitution or non-medical switching which is important to our coalition partners. For some people, switching medications can have serious consequences. For example, when a patient is taking multiple medications, their doctor needs to find the right combination that works without causing negative side effects, and that becomes difficult as more drugs are added into what essentially becomes a drug cocktail. The bill doesn't provide as much protection in this area as we would like, but this legislation puts us in a better place than we are in today. On behalf of the Coalition, I urge you to not only support this important legislation but to insist upon rapid implementation as soon as this legislation is passed. These changes are critical to the people we represent, and they have already waited far too long for these changes to be implemented.

Thank you for your time and consideration.



February 8, 2021

To: Chair Sanfelippo
Assembly Committee on Health
From: Wisconsin Primary Health Care Association
RE: Considerations for Health Centers and Patients in AB 7

Members of the Assembly Committee on Health:

The Wisconsin Primary Health Care Association, the member association for Wisconsin's 17 Federally Qualified Health Centers ("Health Centers"), is writing to share considerations to protect and serve Health Centers and their patients through Pharmacy Benefit Manager (PBM) regulation. In 2019, across nearly 200 Wisconsin service locations, Health Centers served over 300,000 patients, providing primary care, dental, behavioral health, and pharmacy services for Wisconsinites who are often missed by the traditional health care system – regardless of a patient's ability to pay.

WPHCA appreciates this opportunity to provide feedback regarding Assembly Bill 7 (AB 7), supports the bipartisan proposal, and appreciates your continued leadership and dedication to action on this key issue.

Health Centers work with PBMs to meet the needs of patients who use private insurance or Medicare for prescriptions. Several Health Centers operate in-house pharmacies, some rely strictly on contract pharmacies, and several use both methods for prescription distribution or supplement with mail order options. Key areas of concern for Health Centers related to PBMs include the potential for cost inflation passed along to consumers, discriminatory contracting and steering patients to particular pharmacies thereby reducing patient choice, and clawbacks. We are pleased to see that AB 7 addresses many of these issues.

WPHCA supports the following provisions in AB 7 and believes they will result in direct benefits for Health Centers and their patients:

- **Prohibiting Gag Clauses, Imposing Cost-Sharing Limitations, and Notification of Formulary Changes (Sec. 15):** Health Center pharmacies are dedicated to ensuring that patients can access low-cost medications. Pharmacy staff appreciate the flexibility to inform patients when a medication is available at a lower cost, support the cost-sharing limitations intended to make sure that patients do not over-pay for life-saving products, and support the formulary change notification provisions.
- **Fair Business Practices (Sec. 21):** Health Center pharmacies recognize the value of certification and accreditation. However, compliance with requirements that change often or with little notice can be administratively burdensome and yield minimal or no patient benefits. Requiring notice and implementing minimum frequency requirements for certification or accreditation changes as a condition of network participation would support meeting quality measures while reducing overly burdensome administrative processes, further freeing up pharmacy resources for patient care.
- **Clawbacks (Sec. 21):** Health Centers appreciate the protections against unfair claim reductions included in AB 7. However, WPHCA seeks clarification on the definition of a PBM "quality program" which may be interpreted broadly. Health Centers are concerned that PBMs may apply retroactive claim reductions for "quality programs" that may not actually be substantively beneficial to the provision of quality patient care. An effective quality program defines standards proactively and transparently measures against those standards consistently, with a clear tie to improved outcomes. Further, as a requirement of their FQHC status, Health Centers must maintain and manage a quality improvement program. They already report an extensive set of quality data annually to the Health Resources and Services Administration, known as the Uniform Data System.



- **Auditing Practices and Use of Audit Results (Sec. 21):** Health Centers appreciate the transparency requirements related to both the completion of an audit and restrictions regarding use of audit results. Implementing such changes will facilitate audit processing and ultimately support quality care.

WPHCA recognizes the need for compromise legislation that will begin to move the needle on PBM issues, which AB 7 does well. We would like to highlight the following provisions from 2020 AB 114/SB 100 (unamended) and requests that they be considered in future PBM regulatory or legislative efforts:

- The original 2020 bill's provisions related to PBM Networks are critical to ensuring that patients and Health Centers are not subjected to unfair practices. The issues related to patient "steering" will continue without further regulatory intervention. Discriminatory contracting is *the most* critical issue for Health Centers, which is not addressed in AB 7. The following provisions should be considered in future action:
 - Prohibit a PBM from reimbursing a pharmacy or pharmacist an amount less than the amount that the PBM reimburses an affiliate of the PBM for providing the same services. This is especially critical for pharmacies that participate in the 340B Drug Pricing Program, as PBMs may impose unfair conditions of participation in a PBM network or penalize Health Center-operated pharmacies due to their participation in the program.
 - Prohibit an insurer, self-insured health plan, or PBM from requiring or penalizing a person who is covered under a disability insurance policy or self-insured health plan for not using a specific retail, specific mail order, or other specific pharmacy provider within the network of pharmacy providers under the policy or plan.
- Require PBMs to establish and follow a written appeals process that allows a pharmacy or pharmacist to appeal the final report of an audit and allow the pharmacy or pharmacist as part of the appeal process to arrange for, at the cost of the pharmacy or pharmacist, an independent audit.
- Provide restrictions on the use of audit results, including:
 - Refrain from using extrapolation in calculating the recoupments or penalties for an audit.
 - Base a finding of overpayment or underpayment of a claim on the actual overpayment or underpayment and not on a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.
- Prohibit PBMs from requiring that a pharmacy or pharmacist enter into one contract in order to enter into another contract.

WPHCA affirms our shared goals to ensure that all Wisconsin residents have access to high quality care, including affordable pharmaceutical products, and appreciates your ongoing dedication to protecting patients. On behalf of Wisconsin's Health Centers, thank you for the consideration of our comments and your leadership on this critical issue.

Sincerely,

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