



March 10, 2021

The Honorable Zach Stephenson, Chair Commerce Finance and Policy Committee
Minnesota Commerce Finance and Policy Committee Members
Minnesota House of Representatives
509 State Office Building
St. Paul, MN 55155

Re: **HF 1576 – Pharmacy benefit managers prohibited from contractually restricting pharmacies from discussing reimbursement amount to enrollees or health carriers.
PCMA Testimony with Concerns and in Opposition of HF 1576**

Dear Chair Stephenson and Members of the Commerce and Finance Policy Committee:

My name is Michelle Mack and I represent the Pharmaceutical Care Management Association, commonly referred to as PCMA. PCMA is the national trade association for pharmacy benefit managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage provided by large and small employers, health insurers, labor unions, and federal and state-sponsored health programs.

This bill raises concerns for PCMA and therefore, we respectfully oppose HF 1576. PCMA supports the patient paying the lowest amount at the pharmacy counter, and opposes the use of “gag order” contract provisions that prevent in any way a pharmacist from discussing relevant information with a patient—the copay, therapeutic alternatives, over the counter options, and other items that are relevant to a patient’s decision about their treatment. In all Medicare Part D plans, patients pay the lesser of their plan’s cost-sharing amount or the cash price of the drug (also known as the “usual and customary price”) at the pharmacy counter, and as an industry, PCMA member companies support this policy in the commercial market. Health plan members should always pay the best price—be that their copay or the pharmacy’s cash price. In 2019, this “gag order” language was enacted as 62W.11 and we are currently awaiting the Department of Commerce to promulgate rules.

Though PCMA supports the patient paying the lowest possible price at the pharmacy, HF 1576 would allow for the disclosure of confidential contract terms that could lead to anticompetitive behavior. The bill language would allow a pharmacist to disclose confidential contract information, without any clear protections. These confidential contract terms serve as an underpinning to competition in the PBM-pharmacy marketplace. If pharmacies can disclose and subsequently compare reimbursements and other confidential information, it would undermine negotiations between PBMs and pharmacies, leading to anti-competitive behavior and potentially higher prescription drug costs for patients and payers. In addition, this legislation ignores the role of Pharmacy Services Administrative Organizations (PSAOs), which bargain on behalf of independent pharmacies and contract with PBMs. These PSAOs are an essential entity in any discussion or requirements around PBM and pharmacy contracts.



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Page 2

In addition, in 2019 62W.06 was enacted which requires numerous disclosures to be made to the plan sponsor, upon their request to the PBM, some of which are listed below:

1. De-identified claims level information in electronic format that allows the plan sponsor to sort and analyze the following information for each claim:
 - (i) whether the claim required prior authorization;
 - (ii) the amount paid to the pharmacy for each prescription, net of the aggregate amount of fees or other assessments imposed on the pharmacy, including point-of-sale and retroactive charges;
 - (iii) any spread between the net amount paid to the pharmacy in item (ii) and the amount charged to the plan sponsor;
 - (iv) whether the pharmacy is, or is not, under common control or ownership with the pharmacy benefit manager;
 - (v) whether the pharmacy is, or is not, a preferred pharmacy under the plan;
 - (vi) whether the pharmacy is, or is not, a mail order pharmacy; and
 - (vii) whether enrollees are required by the plan to use the pharmacy;
2. The aggregate amount of payments made by the pharmacy benefit manager to pharmacies owned or controlled by the pharmacy benefit manager on behalf of the sponsor's plan.

The pharmacist does not have a contractual relationship with the plan sponsor, so we are not sure what is hoped to be accomplished by allowing pharmacies to have such conversations. Given all the disclosure requirements that are listed above, it seems that anything the pharmacy would hope to provide to the plan sponsor is already something they are aware or can ask on their own. Finally, we are still awaiting the Department of Commerce to promulgate the rules relative to this.

Allowing the pharmacy to talk to patients about reimbursement will only lead to disclosure of confidential contract terms that could lead to anticompetitive behavior. In addition, the plan sponsor already knows or has the ability to request any reimbursement questions that may exist directly from the entity they contract with, which is the PBM.

Thank you for your time and consideration. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Mack".

Michelle Mack
Director, State Affairs
Phone: (202) 579-3190
Email: mmack@pcmanet.org

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
Washington, DC 20004
www.pcmanet.org