February 28, 2012

The Honorable Kurt Olson
State Capitol, Room 24
Juneau, AK 99801-1182

Dear Representative Olson:

On behalf of the National Community Pharmacists Association (NCPA) and its 23,000 members I wish to thank you for conducting the February 27th hearing on H.B.259 – Fair Pharmacy Audits. NCPA assures you this issue is one that requires the enactment of legislative protections for community pharmacists everywhere. As was presented during this hearing, the standards set forth in H.B.259 are fair and reasonable measures that simply protect pharmacy from outrageous audit claims, and extreme financial penalties placed on them by the Pharmacy Benefit Manager (PBM) industry. NCPA provides this letter as a follow-up to the questions and comments presented by committee members during this hearing which NCPA was not able to comment on. We hope the information provided below clears up the member's questions and concerns:

Who does the PBM work for?
Full-service pharmacy benefit managers (PBMs) are companies that focus on managing the prescription drug benefit on behalf of employers, union groups, third-party administrators, Part D Plans (PDP), managed care organizations (MCO) and other payers (entities that offer and pay for drug benefits for their members). PBMs typically provide the following services either directly or through outsourcing or contracts with other entities: Adjudicate drug claims; contract with retail and mail pharmacy networks; develop formulary or drug lists of covered therapies; provide benefit design consultation; manage cost/utilization trends; and contract for manufacturer rebates. Some examples of full service PBMs are Express Scripts, Medco Health Solutions and CVS Caremark - collectively known as "the Big 3."

To give you a sense of the vast market power of the "Big 3"-- In 2011, Medco recorded approximately $66 billion in annual revenue, CVS/Caremark recorded $48 billion (over $90 billion if calculated as a combined pharmacy and PBM) and Express Scripts recorded $45 billion.

Paying actual costs instead of extrapolation—are you sure you want to do that? I see huge administrative hassles for pharmacists.

Extrapolation is a serious issue that must be corrected. Legislation addressing this issue has been enacted in other states (i.e. Florida). NCPA has never been told that an increased administrative burden was the result of such legislative language. The true administrative burden is a result of the ability of a PBM to enter a pharmacy and demand X number of pharmacy records with no concern for the hectic schedule of a pharmacist/small business owner. According to a national pharmacy audit survey (see attached) approximately 78 percent of audited pharmacies were audited using extrapolation. It is NCPA's position that an entity should not "approximate" when auditable offenses would occur. NCPA members are continuously burdened by such outrageous audit standards and claims. Support of H.B.259 would vastly improve this burden.

Given all the different entities that can request audits, is there any limit on how often pharmacists can be subject to an audit?
No – Pharmacies can be audited, and are audited regularly. There is no exact number which NCPA can cite demonstrating how many times a particular pharmacy is audited. Some pharmacies are audited multiple times a year. PBMs are a virtually unregulated industry even though they claim otherwise. They can audit as they wish. They will claim that these audits are contractually based, but in reality these contracts are take it or leave it and must be agreed to for

100 Daingerfield Road
Alexandria, VA 22314-2888
(703) 683-8200 PHONE
(703) 683-3619 FAX

a pharmacy to stay in business. The PBM industry has vigorously resisted any and all attempts at regulation at either the federal or state level as is demonstrated by their resistance to the reasonable and limited regulation over their audit practices. PBMs are not regulated at the federal level. There are eight states (not fifty) in which the PBM merely has to register with the State Insurance Department. There are six states in which the health plan has the right to request the disclosure of certain information from their PBM; however, none of these states actually require the PBM to affirmatively make these disclosures on a regular basis and most likely the health plans are not well versed in what information to request or how to decipher it in practical terms. There are 15 states that have passed "fair audit" provisions to try to curb the frequently overreaching and abusive audits conducted by the PBMs of retail pharmacies. Finally, there is one state board of pharmacy that has any jurisdiction over PBMs. With this being said, there is a long track record of enforcement actions alleging fraudulent and deceptive conduct against the PBMs by state and private entities due to this lack of regulation.

Does a pharmacy have to absorb some of the audit costs in their overhead?
There is no reasonable way for a pharmacy to absorb the cost of future audits largely because it is impossible to for a pharmacy to predict how many times they will be audited and how much the PBM will attempt to recoup. Also, community pharmacy operates on set reimbursement rates and dispensing fees. Unlike large chains that have "front of store" sales of other items, independent community pharmacies operate almost entirely on prescription sales. The figure of $7,500 for an $85 drug was continuously cited which is at the lower end of the spectrum for what some independent pharmacists are audited for. NCPA members have been audited for significantly more including tens and hundreds of thousands of dollars.

Concern over bureaucracy:
H.B.259 sets reasonable standards for pharmacy audits. It should result in no additional bureaucracy. NCPA does not understand how the fair and reasonable measures presented in H.B.259 would increase oversight or administration.

How long has the model legislation been in place? Is it working?
NCPA has had model audit language for years. The model language H.B.259 is based on is a reliable and effective piece of legislation which many states have utilized. States are encouraged to edit the language to meet their needs. It is the standard for audit legislation and has been viewed as such at the state and federal level. During the hearing, representatives of CVS/Caremark stated that not many states have language such as H.B.259. This is untrue. Many states have language that is very similar. Just a few of these states are North Dakota, Florida, Georgia, Indiana and Kentucky.

Who benefits financially and who loses from this bill?
There are no losers in this bill. This bill would simply establish some primary ground rules for PBM audits of pharmacies which will ultimately benefit both the PBMs and the pharmacies. Under the current standard operating procedure in which the PBM enjoys virtually carte blanche with respect to audits, individual pharmacies are at the mercy of the PBM. With no guidelines for how, when and what a pharmacy can be audited for the PBMs will ultimately make a profit. They will simply search for auditable offenses until they find something to make a profit from. Such offenses may include an illegible physician signature, a physician circling their name in the corner of a prescription pad or mistakenly circling 2 names instead of their own, or even the physician spelling the patients name incorrectly. Each of these issues could result in all costs for the prescription, and all refills, being recouped from the pharmacist. These are all real-life examples of audits which have been experienced by NCPA members.

Is this a solution looking for a problem? We don't even know how many audits there are.
Absolutely not. The issue of PBM regulation and fair and uniform pharmacy audits is a priority of NCPA across the nation. This issue has detrimental impacts to independent pharmacy and small business. One needs only look at some of the stories regarding pharmacy audits to realize what an important issue this is. Please review the attached audit stories.

Would it be beneficial for this legislation to include the # of audits being done?
NCPA would support the addition of language requiring PBMs to report the number of audits performed – both desk and in store audits to a state agency or board.

Are any other states establishing standards for PBMs? Do you know how many?
As stated above, the PBM industry is virtually unregulated. PBMs have vigorously resisted any and all attempts at regulation at either the federal or state level as is demonstrated by their resistance to the reasonable and limited regulation over their audit practices. PBMs are not regulated at the federal level. There are eight states (not fifty) in which the PBM merely has to register with the State Insurance Department through a simple application process. There are six states in which the health plan even has the right to request the disclosure of certain information from their PBM; however, none of these states actually require the PBM to affirmatively make these disclosures on a regular basis and most likely the health plans are not well versed in what information to request or how to decipher it in practical terms. There are 15 states that have passed "fair audit" provisions to try to curb the frequently overreaching and abusive audits conducted by the PBMs of retail pharmacies. Finally, there is one state board of pharmacy that has any jurisdiction over PBMs. With this being said there is a long track record of enforcement actions alleging fraudulent and deceptive conduct against the PBMs by state and private entities due to this lack of regulation.

How widespread is this issue?
Nationwide. NCPA is continuously engaged in many states attempting to enact fair pharmacy audit legislation.

If you have any further questions or concerns please do not hesitate to contact me at matt.diloreto@ncpanet.org or 703-600-1223.

Sincerely,

Matthew J. DiLoreto
Director, State Government Affairs