America's Health Insurance Plans

601 Pennsylvania Avenue, NW
South Building
Suite Five Hundred
Washington, DC 20004

202.778.3200
www.ahip.org

January 25, 2018

Representative Sam Kito
Chairman, House Labor and Commerce Committee
Pouch V
Juneau, AK 99801

Re: HB 240, Pharmacy Benefit Managers

Dear Representative Kito,

I write today on behalf of America's Health Insurance Plans (AHIP) to respectfully oppose HB 240, a bill that requires pharmacy benefit managers to register with the Division of Insurance and establishes troublesome provisions regarding pharmacy appeals and audits.

AHIP is the national association whose members provide insurance coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

Insurers contract with pharmacy benefit managers (PBMs) as an efficient and effective way to administer prescription drug benefits and ensure that pharmacies and other health care providers are providing quality care. PBMs help consumers save on the cost of prescription drugs while using clinically based services to reduce medication errors, achieve higher rates of medication adherence, and improve health outcomes. PBMs are able to negotiate directly with manufacturers and pharmacists to obtain discounts for their customers. To encourage further savings, PBMs are committed to educating their customers about safe, effective, and lower cost generic drugs.

PBMs are not insurers and should not be subject to the Division of Insurance's regulatory authority.

HB 240 allows the Division of Insurance to be the ultimate arbiter of prescription drug pricing disputes between pharmacies and PBMs and funds the Division's new duties through a registration and renewal fee on PBMs. This would increase costs to consumers and insurers, and yet, the pharmacies initiating the disputes would have no fees or assessments imposed on them.

PBMs are predominantly business and administrative entities – not insurers. Giving the Division regulatory authority over such commercial business entities would be akin to having the division oversee other businesses that provide services to insurers, like accountants. We are also concerned that the Division lacks subject matter expertise on drug pricing issues and does not

have the authority to render decisions over disputes between commercial entities that are not subject to the Insurance Code.

PBMs and pharmacies' disputes are already arbitrated through avenues provided within contracts between such entities, making the appeal provisions in HB 240 a solution in search of a problem. Giving the Division the authority to be the ultimate arbiter in these disputes would inappropriately insert them into privately negotiated contracts between PBMs and pharmacies.

This bill limits insurer's and PBMs' tools to prevent wasteful spending, fraud, and abuse.

In an effort to ensure that pharmacies and other health care providers are providing quality care, insurers and PBMs utilize various auditing procedures to identify and correct errors and uncover fraud and abuse that leads to poorer quality of care and higher costs. Audits are used to recoup monies incorrectly paid for claims with improper quantity, improper days' supply, improper coding, duplicative claims, and other irregularities. In a time of rising health care costs, preventing fraudulent activity is an important tool to keeping health care costs down. Like pharmacy appeals, audit procedures are already contained in contracts between PBMs and pharmacies. We are once again opposed to the attempt to legislate privately negotiated contracts.

Furthermore, we have concerns with the provision requiring PBMs to give pharmacies 10 days written notice before conducting an initial on-site audit. Advanced notice before an audit would give individuals ample time to hide evidence of fraudulent activities or evade authorities altogether. Proposals for written notice requirements include the range of prescription numbers subject to the audit or the date on which prescriptions subject to the audit were dispensed. We are also concerned with the provision limiting the number of prescriptions which may be audited in a 12-month period. These types of limitations impede the ability of auditors to detect fraudulent prescriptions. Such a restriction would allow pharmacies acting illegally to beat the system easily and not get caught.

This bill would limit the use of MAC pricing – driving up the cost of prescription drugs.

Health plans are committed to assuring that consumers have access to quality, affordable prescription drugs. We are therefore concerned that the bill would limit the use of the maximum allowable cost (MAC) pricing structure to multi-source generic drugs only. MAC pricing, used in nearly 50 states, was developed to encourage pharmacies to seek and purchase generic drugs at the best and lowest price in the marketplace. Restricting the use of MAC would do immeasurable harm to the market by removing a critical component in market pricing and negotiations. This would further drive up prescription drug costs – already the fastest growing driver of health care costs – without providing additional benefits for consumers.

For those reasons, we oppose HB 240. We appreciate the opportunity to provide comments on this important issue. If you have any questions, please do not hesitate to contact me at sorrange@ahip.org or 703-887-5285.

Sincerely,

Sara Orrange
Regional Director