May 15, 2017

The Honorable Sam Kito
Chair House Labor and Commerce Committee
State Capitol, Room 124
Juneau, AK 99801

RE: House Bill 240 – Relating to Pharmacy Benefit Managers – Please Oppose

Dear Senator Kito,

Aetna is writing to respectfully oppose HB 240, Relating to Pharmacy Benefit Managers. HB 240 creates costly and unnecessary regulation. Aetna uses Pharmacy Benefit Managers to balance both the health needs of our members and the practical needs of businesses.

Issues of concern with HB 240 include furthering the oversight for Pharmacy Benefit Managers under the Division of Insurance. Pharmacy Benefit Managers are required to be licensed with the Alaska Board of Pharmacy; as a Third Party Administrator with the Division of Insurance and registered with as a business entity in the state. In addition, at the federal level, Pharmacy Benefit Managers hold multiple federal licenses to operate with the DEA, CMS (Medicare Part-D) and as a federal contractor. Adding the ability for the Division of Insurance to weigh into private contracts between a Pharmacy Benefit Manager and a Pharmacy, establish an alternative forum outside of the legal contract to address disputes and re-create an already existing arbitration process is unnecessary.

Aetna uses Pharmacy Benefit Managers in pharmacy plans for a variety of reasons including ensuring pharmacy claims are being processed and paid in an appropriate manner. Audits allow a health plan and the businesses it serves to make certain that the pharmacy claims they are paying for are appropriate and do not contain instances of fraud, waste and abuse. In a time of rising health care cost, preventing fraudulent activity is an important tool to help keep health care cost down. HB 240 would limit Pharmacy Benefit Manager's ability to audit pharmacies by limiting the number of prescriptions available to audit, limiting the days that an audit can occur and dictating the methods a Pharmacy Benefit Manager can use to audit a pharmacy.

HB 240 limits the ability of Pharmacy Benefit Managers to use an over forty-year-old tool, called the Maximum Allowable Costs (MAC) list. A MAC list is a common cost management tool that is utilized by Pharmacy Benefit Managers, state Medicaid agencies, CMS and Health Plans taking into account marketplace dynamics, product availability and pricing. The federal government and many state Medicaid programs use MAC lists for reimbursement purposes. MAC is the maximum allowable reimbursement by a Pharmacy Benefit Manger to a pharmacy for a

particular generic drug. Every manufacturer has its own price for a particular generic drug and these prices can differ extensively by manufacturer. MAC lists are continuously updated to reflect the current market dynamics and encourage pharmacies to purchase generics at the lowest possible cost, driving competition among wholesalers and manufacturers, thereby lowering costs for payers and members.

Healthcare costs in Alaska are among the highest in the United States and are continuing to rise each year. HB 240 will create more unfunded regulations that do nothing to improve access to care for Alaskans and will not aid in the efforts to control health care costs in Alaska.

Thank you for the opportunity to submit our concerns about HB 240.

Sincerely,

Shannon Butler
Senior Director of Government Affairs, West Region

ALASKA TEAMSTER-EMPLOYER
SERVICE CORPORATION

January 23, 2018

Honorable Sam Kito
House Labor & Commerce
State Capital Room #105
Juneau, Alaska 99801

Re: House Bill No. 240

Dear Representative Kito:

On behalf of the approximately 4000 Teamster members and their families covered under the Alaska Teamster-Employer Welfare Trust, we continue to oppose House Bill No. 240 which proposes to regulate the audit of our members' prescription drugs.

The Plan's Prescription Benefit Manager (PBM) OptumRx performs infrequent onsite audits within Alaska; however, during any given calendar year would perform a maximum audit volume of 6-8% of the network pharmacies. The PBM's audit approach has also transitioned away from extensive onsite audits. The audits being conducted which incorporate claim reviews are done very concurrent to claim submissions to mitigate client prolonged risk to inaccurate payments due to repetitive errors. Our PBM conducts a large volume of daily audits on high risk medications and performs desktop audits monthly to monitor pharmacy claims for aberrancies in claims payments. Audit expectations and processes are clearly outlined in the PBM's Provider Manual which acts as an extension to the Provider Agreement.

While we understand the pharmacy position on the need to mitigate risk associated with punitive and aggressive audit tactics, the relationship between the pharmacy and the pharmacy benefit manager is a negotiated contract and should remain as such. Business entities should be allowed to enter a business arrangement and dictate the limitations of that arrangement. This should not require legislation.

We ask that you not move this bill from committee.

Sincerely,

Dennie Castillo
Administrator
Alaska Teamster- Employer Welfare Trust

c: Vice-Chair Adam Wool
Member Representatives – Josephson, Stutes, Birch, Edgmon, Knopp and Sullivan-Leonard

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PCMA

January 25, 2018

Representative Sam Kito, Chair
House Labor & Commerce Committee
Alaska State Capitol
Juneau AK 99801

Re: PCMA Opposition to HB 240, Relating to Pharmacy Benefit Managers

Dear Chairman Kito:

On behalf of the Pharmaceutical Care Management Association (PCMA) we must respectfully oppose SB 38, relating to pharmacy benefit managers. PCMA is the national trade association for America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage through Fortune 500 companies, health insurers, labor unions, and federal and state-sponsored health programs.

PCMA is concerned that HB 240 creates costly and unnecessary regulation. It gives the director of the Division of Insurance unprecedented power to interfere in private contracts. Contracts between PBMs and pharmacies are negotiated in good faith, outline expectations and reimbursement terms, and many of them provide for arbitration if there are disputes. HB 240 would establish an alternative forum for adjudicating disputes, going around agreed-upon arbitration provisions. Furthermore, the Division of Insurance does not have the expertise to adjudicate the terms of drug pricing and reimbursement.

HB 240 also establishes restrictions on audits done by PBMs to ensure that pharmacies are not engaging in fraudulent activities and to ensure that health care payers are getting what they pay for. Health plans and employers that use PBMs rely on audits of their network pharmacies to recoup monies incorrectly paid for claims with improper quantity, improper days' supply, improper coding, duplicative claims, and other irregularities. Auditors also ensure that pharmacies are complying with Board of Pharmacy rules, including the proper storage of prescription drugs or posting of required signs, increasing patient safety at the pharmacy.

Finally, the state-mandated pricing scheme that HB 240 establishes will increase costs for employers and consumers. The use of the term "multi-source generic drug" in the proposal will limit the types of generic drugs that can be reimbursed under a maximum allowable cost (MAC) methodology. MAC reimbursement encourages pharmacies to purchase efficiently and is used by most private employer prescription drug plans and Medicaid agencies across the country. This bill would limit the ability to use this cost saving mechanism in pharmacy benefits.

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

PCMA

It is for these reasons that we must respectfully oppose HB 240. Thank you for the opportunity to share our concerns with HB 240. If you have any questions, please don't hesitate to call me at 202-756-5745. Thank you.

Sincerely,

Bill Head
Senior Director, State Affairs

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

America's Health Insurance Plans

601 Pennsylvania Avenue, NW
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Washington, DC 20004

202.778.3200
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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

HCCMCA
HEALTHCARE COST MANAGEMENT
CORPORATION

January 26, 2018

Honorable Sam Kito
Chair, House Labor and Commerce Committee
State Capitol Room 403
Juneau, AK 99801
Representative.Sam.Kito@akleg.gov

Re: Opposition to HB 240.

Dear Representative Kito,

On behalf of Healthcare Cost Management Corporation of Alaska (HCCMCA), I am writing in opposition to HB 240, the Pharmacy Audit bill.

The membership of HCCMCA is comprised of over 45 member health benefit plans in Alaska and the Pacific Northwest. These funds consist of employer-sponsored health benefit plans, including Alaska State, Borough, Municipal and School District sponsored plans, as well as private employer and Taft Hartley health benefit plans. Our member funds represent over 100,000 Alaska employees and their dependents, comprising a substantial percentage of Alaska's Population. Most or all of these funds contract with pharmacy benefits managers (PBMs) as a means to help control their rising drug costs.

As you know, healthcare fraud, waste and abuse are a national epidemic. It is estimated to account for 10% of the United States' annual healthcare expenditure, representing at least $225 billion every year, and these numbers have grown each year.

As you also know, Alaska's workers' compensation premium rates are among the highest in the United States. Several years ago, in an effort to hold down Alaska's rising workers' compensation costs, the Alaska legislature funded increases in the division's fraud detection unit. HCCMCA is concerned that this bill, HB 240, sends the opposite message, that Alaska is less concerned about Alaska's high and rising costs of health care, and not about detecting and eliminating fraud and abuse.

Indeed, regarding practices of independent pharmacies, a May, 2012, report by the Department of Health and Human Services Office of Inspector General suggests independent pharmacies need more oversight, not less. The inspector general's report said independent pharmacies were eight times more likely than other pharmacies to have questionable billing practices.

Against this backdrop, HCCMCA is concerned that HB 240 is not balanced, and it unduly protects the ability of pharmacists to shield their bad actors from scrutiny. For example, the

bill requires payers to provide advance warning of an audit – even in cases when fraud is suspected – which would give suspects time to tamper with evidence and even avoid detection altogether. Moreover, when mistakes are found, HB 240 prohibits use of extrapolation as an accounting practice, and it further penalizes our plan sponsors by disallowing full reimbursement of our members' costs incurred, plus interest.

The independent drugstore industry, which generates over $80 billion in annual sales from at least 22,000 stores nationwide, ranks among America's most profitable small business sectors. As such, we believe pharmacists have the independent capacity to structure their contracts with PBMs in such a manner as to adequately protect their interests, and the State of Alaska should not become entangled in a dispute between the National Community Pharmacists Association and the PBMs.

During this period when Alaskans regularly object to the burden of governmental regulations, as well as the high cost of medical care, this is not the time to add more regulatory restrictions on Alaska's health benefit plans, and their ability to protect themselves against rising medical costs.

HB 240 is unnecessary, and HCCMCA opposes the legislation as proposed.

Feel free to contact me if you have any questions.

Sincerely,

Fred G. Brown

Fred G. Brown, Esq.
Executive Director