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Michigan State Capitol
100 N Capitol Ave
Lansing, MI 48933

Dear Legislator,

It has come to our attention that the Senate Committee on Health Policy and Human Services will soon have a hearing on HB 4348, the Pharmacy Benefit Manager Licensure and Regulation Act. This legislation, should it become law, would allow the Department of Insurance and Financial Services (DIFS) to insert itself into many aspects of pharmacy benefit management and allow the government to interfere with privately negotiated contracts among insurers, pharmaceutical benefit managers (PBM) and the sponsors they serve, including businesses, unions, state and local government, associations, and other organizations that provide health insurance to their employees or members. On behalf of the 60,956 members and supporters of the Council for Citizens Against Government Waste (CCAGW) in the state of Michigan, I urge you to oppose this legislation.

HB 4348 would seriously harm the ability of PBMs to use a variety of tools and policies that help their clients manage their pharmacy benefits and lower drug costs. For example, the bill would allow the DIFS to restrict the ability of PBMs to manage their networks and essentially implements an “any willing pharmacy” option. PBMs create networks that encourage price competition, increase volume, and lower drug costs for their clients and patients. Their networks include mail order pharmacies and specialty pharmacies that dispense drugs for rare conditions that require special handling, which most pharmacies are not qualified to undertake. Allowing a patient to use any pharmacy but receive the same discount negates the purpose of the network and will drive drug costs up. It will also make it more difficult for specialty drugs to be dispensed safely and effectively.

PBMs utilize their networks to help with patient adherence, reduce dispensing errors, and conduct audits to make sure the pharmacy is working within the standards required by the network, including investigating potential fraud. These activities help protect patients and reduce costs. But HB 4348 would inhibit the PBMs from implementing these important policies, particularly conducting audits. Requiring a PBM to provide a specified notice date and scheduling requirements defeats the purpose of the audit. While the legislative analysis states the audit provisions would not apply to an “audit conducted to investigate fraud, misrepresentation, or abuse,” other inspections would still need to be able to occur to find potential problems that may need further review.

The law also implements price controls by requiring a PBM, or a carrier, to not reimburse a pharmacy or a pharmacist for a prescription drug or service that is an amount less than the national average drug acquisition cost. The bill would allow the DIFS to review and approve a

network pharmacy reimbursement that is “fair and reasonable.” But pharmacies are not uniform. They purchase different drugs at different times and pricing on a individual drug will vary depending on volume and rebates a pharmacy may receive.

Placing restrictions on the ability of a PBM to control access to medications, like quantity refills or frequency limits, will also drive up costs. For example, a PBM may dispense medications for a three-month supply, instead of monthly, to save their sponsor pharmaceutical healthcare costs. This not only saves money; it also helps to reduce dispensing errors.

The bill would also impose significant government transparency requirements on PBMs, which would do nothing to drive down drug costs but could be used by competitors to discover the proprietary pricing negotiations among pharmaceutical companies, pharmacy benefit managers, and pharmacists. A Federal Trade Commission policy paper, “Price Transparency or TMI,” pointed out that while it is good for consumers to have information about the healthcare services they utilize, “Too much transparency can harm competition in any market, including in health care markets.” The authors wrote, “transparency is not universally good. When it goes too far, it can harm competition and consumers. Some types of information are not particularly useful to consumers, but are of great interest to competitors. We are especially concerned when information disclosures allow competitors to figure out what their rivals are charging, which dampens each competitor’s incentive to offer a low price, or increases the likelihood that they can coordinate on higher prices.”

HB 4348’s legislative analysis states the bill “would have a significant fiscal impact on DIFS. The bill would increase departmental costs for regulating pharmacy benefit managers (PBMs). However, revenues would also increase from fees and fines assessed on PBMs. It is presently indeterminate whether revenue under the bill would sufficiently offset departmental costs.” The bill would necessitate at least three additional FTE positions at an annual cost of \$209,000 and unknown technology costs to implement.

The legislation would do nothing to lower drug costs in the state of Michigan and instead will raise them, along with saving little or no money for taxpayers. PBMs play a vital role in the complex process of providing pharmaceutical benefits to employees. This legislation supports one special interest while ignoring the needs of businesses, unions, and others that depend on PBMs to drive down drug costs and help their employees and members get access to vital pharmaceuticals that keep them healthy. For these reasons, I ask that you oppose this ill-advised legislation.

Sincerely,

Tom Schatz