



October 18, 2021

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul,

I write to you today on behalf of American Pharmacy Cooperative ("APCI"), a pharmacy cooperative consisting of more than 1,700 community pharmacies across thirty states, including New York, in full support of the package of pro patient and pro pharmacy bills awaiting your signature. Those bills are:

- S03566/A05854 (Strengthen anti-mandatory mail order);
- S03762/A01396 (PBM licensure and regulation);
- S04807A/A06476-A (Pharmacy vaccine expansion); and
- S06603/A07598 (Medicaid pharmacy access).

Throughout the pandemic, community pharmacies and pharmacists have rallied under unimaginably difficult conditions to provide care to their patients and their community. During this difficult period, when so many providers shuttered their doors and access to care has been limited, not only did community pharmacies fight to ensure their patients had access to their needed medications and the care of their pharmacists, but also figured centrally in the fight against COVID-19 itself including providing COVID-19 testing, COVID-19 vaccinations, and now, under recent U.S. HHS action pursuant to the PREP Act, monoclonal antibody administration.

Nonetheless, at a time when community pharmacists have rallied and answered the call to combat the greatest healthcare crisis of our time, community pharmacies continue to labor under policies and practices at the hands of Pharmacy Benefits Managers (PBMs) and Medicaid managed care companies that threaten their very existence including under reimbursing pharmacies and steering patients to PBM affiliated pharmacies. In addition, despite the central role community pharmacists have played in vaccinating the public, state law itself continues to handcuff pharmacists with regard to their authority to administer vaccinations.

The bills set forth below go a long way to ensuring the sustainability of community pharmacies across the state of New York, improving prescription drug pricing transparency, and solidifying patient choice and access to care by reigning in harmful practices of PBMs and Medicaid managed care companies.

S03566/A05854 (anti-mandatory mail order)

This legislation looks to strengthen New York's existing anti-mandatory mail order (AMMO) law by establishing that the same reimbursement amount shall be provided to all pharmacies and the same reimbursement methodology is used. Large PBMs, who through vertical integration are often affiliated with mail order pharmacies as well as insurers, continue to design, implement, and administer plans that attempt to steer patients to PBM affiliated mail order pharmacies.

This legislation, by requiring that the same reimbursement methodologies are used and the same reimbursement amount be provided to pharmacies, looks to prevent exploitation of pharmacies and patients, by ensuring PBMs can't penalize the pharmacies and patients via under reimbursing a community pharmacy of a patient's choice or utilizing a different reimbursement methodology to the detriment of the patient. Importantly, this legislation also helps prevent PBMs from further obscuring drug prices by designing plans with different drug costs depending upon the pharmacy a patient chooses thus helping to bring some much needed transparency for both patients and plans.

S03762/A01396

Many PBM practices are shrouded in secrecy and ripe with self-dealing and conflicts of interest. These practices include charging a patient a copay that exceeds the amount a pharmacy is reimbursed for a drug (copay claw back); imposing gag clauses that prohibit pharmacies from informing patients about cheaper alternatives; PBM rebate practices; and use of complex trade secreted reimbursement methodologies that fail to reimburse pharmacies based on updated drug pricing.

This legislation looks to shine much needed sunlight on PBMs and their practices by requiring, amongst other things, registration of PBMs; reporting of drug pricing discounts, rebates, fees, and requiring those discounts, rebates, and fees be passed on to plans/clients; prohibiting certain practices including copay claw backs and imposing gag clauses on pharmacies.

This legislation also empowers the Superintendent to establish minimum standards which may address a variety of PBM practices including conflicts of interest, deceptive practices, and anti-competitive practices.

In sum, this legislation seeks to bring transparency to prescription drug prices and the opaque practices PBMs employ to maximize profit at the expense of payors, providers, and patients; put an end to PBM conflicts of interest; require PBMs to pass discounts and rebates back to PBM clients; and empower the Commissioner to reign in abusive and problematic PBM practices.

S04807A/A06476-A

As indicated above, community pharmacists have figured centrally in the fight against COVID-19 during the period of healthcare emergency including leading the charge with regard to COVID-19 vaccinations. This legislation looks to, amongst other things, leverage the accessibility and expertise of pharmacists for public health purposes by expanding the vaccines pharmacists can administer via a patient specific order or non-patient specific regimen to include hepatitis A and B, human papillomavirus, measles, mumps, rubella, varicella, and COVID-19 to patients 18 years and older.

It also allows administration of additional immunizations recommended by the advisory committee on immunization practices of the CDC.

In light of the central role pharmacists have played throughout the current public health emergency, the time to further empower pharmacists is now.

S06603/A07598

This legislation seeks to require Medicaid managed care plans to reimburse pharmacies in an amount equal to the Medicaid fee for service rate; allow retail pharmacies access to Medicaid managed care networks of other providers; protect patient choice prohibiting PBMs from limiting patient access to their local retail pharmacy; and prohibiting PBMs and Medicaid managed care companies from paying their affiliate pharmacies more than non-affiliate pharmacies.

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With regard to the matching of Medicaid fee for service rates, this encompasses both the drug cost as well as the professional dispensing fee. New York has an expansive Medicaid managed care program and through this program community pharmacists care for some of the state's most vulnerable populations. It simply should not be the case that the state program itself is the very thing that jeopardizes the viability of community pharmacies by way of underwater reimbursements and menial dispensing fees that fail to cover a pharmacy's cost to dispense medication.

This bill helps to ensure that serving the states vulnerable Medicaid managed care population is not a threat to a community pharmacy's existence and that pharmacies are reimbursed fairly for the care they provide. This pandemic has illustrated that community pharmacies are accessible and critical health infrastructure and for the good of pharmacies, as well as the public health of the state's citizens, fair reimbursement is critical.

Importantly, this bill also prohibits anti-competitive practices that take away a patient's choice of provider and favor PBM and managed care affiliate pharmacies over non-affiliate pharmacies. For New York's Medicaid managed care companies and their PBMs to utilize their position to self-deal and engage in patient steering, limiting access to local retail pharmacies, and paying affiliate pharmacies more than non-affiliate pharmacies is a betrayal of the public trust and must be stopped.

Conclusion

We urge you to sign the above referenced legislation into law as soon as possible. By doing so, you will be reigning in abusive PBM and Medicaid managed care practices; ensuring community pharmacies caring for some of New York's most vulnerable populations are paid fairly; protecting patient access to care and patient choice; empowering the Superintendent to regulate PBMs; and empowering pharmacists to lead the charge on vaccine administration.

Since the beginning of the pandemic, community pharmacies have answered the call and done everything within their power to care for their patients, test for COVID-19, and administer the COVID-19 vaccine. They have stood on the front lines and have delivered for New York. Signing this legislation into law will not only increase transparency and curb abusive PBM and managed care practices, but it will also go a long way toward ensuring community pharmacies will remain where they belong, caring for New Yorkers in communities throughout the state, and empowering patients to utilize the community pharmacy of their choice. Thank you.

Sincerely,

S/ Greg Reybold

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CC: PSSNY Executive Director Deanna Ennello-Butler