March 11, 2024

Senator Chuck Schumer
Senate Majority Leader
Hart Senate Office Building SH-322
Washington, DC 20510

Representative Mike Johnson
House Majority Leader
Rayburn House Office Building 2468
Washington, DC 20515

Senator Mitch McConnell
Senate Minority Leader
Russell Senate Office Building SR-317
Washington, DC 20510

Representative Hakeem Jeffries
House Minority Leader
Rayburn House Office Building 2433
Washington, DC 20515

Re: Pass Key PBM Legislation this Year to Protect Patients

Dear Senators Schumer and McConnell and Representatives Johnson and Jeffries:

The American Society of Health-System Pharmacists (ASHP) writes you today on behalf of the nation's pharmacists, student pharmacists, and pharmacy technicians asking that you quickly pass key pharmacy benefit manager (PBM) reforms that have been extensively considered in both the House and Senate, as well as some other PBM proposals. These reforms will protect the health and safety of patients relying on Medicare, Medicaid, and private insurance coverage, as well as protect federal, state, and employee resources.

Pass Legislation that has Already Been Reviewed: Throughout the 118th Congress, both the House and Senate have passed important legislation that address ongoing concerns with PBM practices, such as PBM abuse of spread pricing in Medicaid and the individual and group markets, excessive PBM fees, and transparency into vertical integration. The House passed the Drug Price Transparency in Medicaid Act of 2023 (H.R. 1613), introduced by Representative Earl L. "Buddy" Carter, that prohibits PBMs from benefiting from Medicaid spread pricing. It also passed the PBM Accountability Act (H.R. 2679), introduced by Representative Annie Kuster (D-NH), that requires annual reporting to plans sponsors on critical information, including the amount received by PBMs in rebates, fees, and alternative discounts. Similarly, the Senate Finance Committee passed The Modernizing and Ensuring PBM Accountability Act (S. 2973), that in addition to prohibiting spread pricing by PBMs in Medicaid, limited the practice of PBMs charging excessive fees by prohibiting Part D plan sponsors and PBMs from instituting network pharmacy performance fees, except when established and adopted by Department of Health and Human Services (HHS). The bill also provided greater transparency into vertical integration by requiring the reporting of information on financial relationships between PBMs, affiliates, and other entities that will bring clarity to practices that negatively impact patient health, such as white and brown bagging.

The Senate Health, Education, Labor, and Pensions Committee also passed S. 1339, the Pharmacy Benefit Manager Reform Act, sponsored by Chairman Sanders, that protects employers and employees from PBM practices by requiring PBMs to report critical information on rebates, fees, and other remuneration, and prohibits PBMs from enriching themselves through spread pricing and rebates at

the cost of employer plans. The legislation also requires that all rebates and other remuneration be passed through and considered a plan asset, further protecting employee benefits.

We request that these PBM reforms that protect patients and have been vetted in the House and Senate Committees be passed this year.

To further protect patients, we also make the following additional recommendations:

PBM Fees: We recommend that no administrative, prescription, quality, performance, or other care-related PBM fees be collected retroactively, but clearly outlined at the point of service. We also recommend PBMs be prohibited from enforcing pharmacy fees except when the quality measure on which a fee is based is directly related to the condition for which a patient is being treated and is appropriate for the setting in which the patient is being treated. **We recommend that any fee collected be clearly outlined in scope and magnitude within the contract with a pharmacy, allowing pharmacies to properly forecast budgeting and understand expectations. There should be complete transparency about expectations and comparator benchmarks related to performance and outcomes.**

Rebates: Manufacturer drug rebates for patient out-of-pocket (OOP) expenses that are being taken by PBMs are opaque and need greater transparency. The Pharmacy Benefit Managers Reform Act provides greater transparency into rebates. In addition, rebates should be provided at the point-of-sale to avoid artificially inflating patient cost sharing, and instituted in a manner designed to simplify reimbursement and promote transparency for both patients and pharmacies. Often the negotiated rate between a PBM and a manufacturer adversely impacts a pharmacy's ability to cover its acquisition cost for a product, the cost to the pharmacy is greater than a dug's acquisition cost. **We recommend point-of-sale reimbursement should, in all cases, be sufficient to cover a pharmacy's acquisition cost for a drug plus a professional dispensing fee to cover expenses incurred.**

Affiliated Entities: White bagging occurs when a PBM requires patient medications be distributed through a narrow network of specialty pharmacies that are often affiliated with the PBM before the pharmaceuticals are then sent to a site of care, such as a hospital, where they must be administered by a provider. Hospitals have strict quality controls, and by circumventing the traditional and regulated hospital supply chain, white bagging raises patient safety risks by enabling diversion and heightening the possibility of drug spoilage/wastage. Brown bagging occurs when a PBM ships non-self-administered medications to a patient, who then must store and transport the product to a healthcare facility for administration. These medications typically require special storage and handling. White bagging and brown bagging put pharmaceuticals at risk of spoilage, contamination, and diversion, putting patients' health at risk. The Modernizing and Ensuring PBM Accountability Act provides greater transparency into these relationships, but **we recommend Congress prohibit PBMs from imposing white and brown bagging on providers.**

Protecting the 340B Program and Providers Against Discrimination: Safety net hospitals rely on the 340B Drug Pricing Program to provide healthcare services, including care for uninsured and

underinsured patients. However, PBMs have been discriminating against 340B providers, including excluding them from networks or making them use their software and other services at additional costs with the intent of reducing reimbursements for 340B purchased drugs. **We recommend Congress prohibit PBMs from discriminating against 340B providers by reducing reimbursement for 340B purchased drugs, excluding 340B providers from networks, or requiring payment of fees or the use of specific claims software.**

We urge you to expeditiously pass these key PBM reforms that will protect patients and look forward to continuing to work with you to ensure Americans have access to safe and effective medications. If you have questions or if ASHP can assist you in any way, please contact Frank Kolb at fkolb@ashp.org.

Sincerely,

Tom Kraus
American Society of Health-System Pharmacists
Vice President, Government Relations