



October 14, 2020

Via Email (InsuranceRegReview.mia@maryland.gov) and Fax (410-468-2020)

Director of Regulatory Affairs

The Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Re: Comments on Draft Code of Maryland Regulations, Sections 31.10.49-50

Dear Director:

Wholesale Alliance, L.L.C. dba Pharmacy First ("Pharmacy First") is a pharmacy services administrative organization ("PSAO") representing more than 2,300 independent pharmacies, of which 45 are located in Maryland.

We are submitting these comments with respect to the draft regulations to be published in the Maryland Register under Title 31 Maryland Insurance Administration, Subtitle 10 Health Insurance-General, Chapters 49 and 50 Pharmacy Service Administrative Organizations ("Draft Regulations").

The Draft Regulations pertain to contracts between PSAOs and pharmacy benefit management companies ("PBMs") on behalf of their client plans. The Draft Regulations allow the Commissioner to approve or to disapprove a contract and to impose a civil penalty up to \$10,000 per violation under Insurance Article, Section 15-2019, Annotated Code of Maryland. The Draft Regulations, however, do not require the approval of the Commissioner of contracts between PBMs and chain pharmacies or independent pharmacies not represented by PSAOs. As a result, the Draft Regulations create an uneven playing field between PSAOs, chain drug stores and independent pharmacies in Maryland and may result in the reduction of the amount of business that PSAOs conduct in the State.

Moreover, the Draft Regulations do not expressly take into account the exception created in House Bill 978 for health plans governed by the Employee Income Retirement Security Act, as amended ("ERISA"). We respectfully request that such ERISA plans be expressly excluded from the operation of the Draft Regulations.



Draft Regulation 31.10.49.03 requires disclosure by PSAOs to member pharmacies, of information related to ownership or control of the PSAOs, changes in ownership or control and contracts and contract amendments with PBMs. We respectfully request that the Maryland Insurance Administration expressly allow disclosure by electronic means including, but limited to, web portal.

The Draft Regulations also require submission to the Commissioner for approval of contracts and contract amendments with PBMs (and group purchasing organizations). Although the Draft Regulations identify certain non-compliant contract terms under Section 31.10.50.04, the requirement for submission of the contract and amendment terms that are subject to review under Section 31.10.50.03 are separate from the terms deemed non-compliant under Section 31.10.50.04. For example, Section 31.10.50.03.E requires the filing of amendments related to: (a) PBM disclosure of specified information to a pharmacy; (b) credentialing fees and the frequency of re-credentialing; (c) sources for maximum allowable cost ("MAC") pricing, updating pricing information, or the process to appeal disputes regarding MAC; (d) the process to appeal disputes regarding cost pricing and reimbursement; (e) fee or performance-based reimbursement; (f) pharmacy audits; (g) retroactive denials or modifications of pharmacy reimbursement; (h) therapeutic interchange; (i) the requirement to provide pharmacies copies of contracts, amendments, payment schedules, or reimbursement rates; (j) notification of a material change in ownership or control of organizations affiliated with the PSAO; (k) the passing of claims remittances from a PBM or purchaser to a pharmacy; (l) any arrangement for a pharmacy to purchase drugs, biologics, or medical devices from an entity under common ownership with the PSAO; (m) the applicability of Maryland law; or (n) any revision to comply with Maryland law. We respectfully request that the grounds for approval or disapproval of such contracts and contract amendments be clarified in the Draft Regulations.

In addition, Draft Regulation 31.10.50.03.J requires the filing of contract amendments with the Commissioner effective October 20, 2020. There is simply not enough time for the PSAO industry to comply with this deadline, and we respectfully request that the Maryland Insurance Administration allow additional time for PSAOs to achieve compliance with this requirement.

Thank you for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to contact me at this email address.

Sincerely,



Robert Dickey

A handwritten signature in black ink that reads "Robert Dickey".

Chief Executive Officer
11880 College Blvd. Suite 420
Overland Park, KS 66210

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