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PHARMACISTS SOCIETY OF THE STATE OF NEW YORK

TESTIMONY

JOINT LEGISLATIVE BUDGET HEARING

HEALTH AND MEDICAID

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Honorable Finance Chairs Senator Young and Assemblywoman Weinstein, Senator Hannon, Assemblyman Gottfried and distinguished members,

My name is Roxanne Richardson. I am a licensed pharmacist practicing in Central New York currently serving as the President of the Pharmacist Society of the State of New York. Joining me is Kathy Febraio, the Society's Executive Director.

The Pharmacists Society is a 140-year-old statewide organization with regional affiliates throughout the state. The Society represents the interests of more than 25,000 pharmacists who practice in a variety of settings. Most of PSSNY's members are community pharmacists. Many are independent pharmacy owners who will be in Albany on March 6th.

Thank you. We begin by thanking legislative leaders and members in both houses for the support you have demonstrated for pharmacists and local pharmacies time and time again. As you have recognized, pharmacist-patient relationships are an important component of healthcare. Pharmacists are the most accessible healthcare provider. We help patients to manage their overall health.

Today more than ever before local community pharmacies face significant pressures, most of which are hidden from public view and the scrutiny of state regulators. Members report that the terms of contracts between pharmacy benefit managers and pharmacies increasingly come with financial strangleholds and very few options to redress grievances and find relief. As a result, we have turned to the legislature and have appreciated the support you have shown for a bill to ensure that audits conducted by pharmacy benefit managers are fair and another bill moving in both houses to ensure that gag clauses are removed and a pharmacist can openly discuss lower cost options with patients at the pharmacy counter.

Pharmacy Benefit Managers Should Be Licensed in New York

PSSNY supported the Governor's 2017 budget proposal authorizing the Department of Financial Services to license and regulate Pharmacy Benefit Managers. As legislators you have supported bills that address specific aspects of contracts between pharmacies and Pharmacy Benefit Managers (PBMs), some of which are now law. But experience has shown that without requiring PBM to be licensed in New York these well-intentioned laws can be ignored without any real consequence. Across the country state and federal authorities as well as private payers have begun to see the connection between high drug costs and PBMs and are passing laws that demand more transparency. For too long PBMs have been allowed to operate in the shadows. Here in New York PBMs are the only healthcare entity that is unregulated, unlike hospitals, nursing homes, health plans, doctors, pharmacists and pharmacies.

2018 Executive Budget Proposals

Part CC. PSSNY opposes the opiate surcharge.

Pharmacists are on the front-line of patient care working to ensure the appropriate use of prescription opioids. Pharmacists fully support the Governor's effort to increase funding for addiction treatment, but pharmacists cannot support the funding mechanism in the Executive Budget proposal.

We begin by applauding the results of policy initiatives in New York that have successfully reduced the over-prescribing of prescription opioids. Recapping current policies:

- Prescribers must check their patient's medication history on the Prescription Monitoring Program (PMP) before issuing an opioid prescription;
- Prescribers must complete mandatory education requirements;
- Pharmacies must submit daily reports of controlled substance prescriptions dispensed to the PMP;
- The PMP is now interoperable with 25 states and D.C.;
- The state imposes a limit of a 7-day initial supply of any prescription opioid to treat acute pain;
- Electronic prescribing is mandatory (with some exceptions).

In fact, New York is ahead of other states in the reduction of opioid over-prescribing. Data from the Health Department's Bureau of Narcotic Enforcement documents the significant drop in "doctor shopping" across the state.

Based on the following reasons, the Society urges the Legislature to reject the proposed excise tax of 2 cents per morphine milligram equivalent (MME) on the "first sale" of a prescription opioid in New York:

1. The "first sale in the state" is likely to be in a pharmacy. Pharmacies do not set drug prices. Pharmacies purchase medications from wholesalers and when drugs are dispensed pharmacies are reimbursed by third parties, frequently at or below cost. Pharmacies are therefore in no position to pay the proposed surcharge.

2. As a tax intended to be borne by opioid manufacturers, this proposal misses its mark. Manufacturers set prices for their drugs, but most are located outside of New York beyond the state's taxing authority. Additionally, manufacturers do not sell directly to pharmacies.

3. When in-state wholesalers receive shipments of drugs from manufacturers, they are likely to be the registered "establishment" where the taxable "first sale in the state" occurs. Wholesalers are in a highly competitive market. Adding opiate surcharge costs to their bottom line gives their out-of-state competitors a marketing advantage and serves only to increase their cost burden. If taxed, wholesalers are inclined to pass on extra costs to the pharmacies that purchase from them.

4. Neither pharmacies nor wholesalers are in a position to pass the new excise tax up the distribution chain and onto manufacturers. The proposed surcharge simply adds more cost that will rest with wholesalers and pharmacies.

5. Patients who need relief from intractable pain will ultimately suffer from the unintended consequence of this deeply flawed proposal. After all, the surest way to avoid the opiate surcharge is not to carry the medications that are taxed. Ultimately the tax causes more pain, less relief, and potentially more heroin.

Part I. PSSNY supports new authority for the Office of the Medicaid Inspector General to audit Pharmacy Benefit Managers.

The rationale for OMIG to audit PBM subcontractors to Medicaid managed care plans is based on this statement in the Executive Budget: "Monies paid by the department to managed care organizations are public funds and retain their status as public funds regardless of any payments made by the managed care organization to its subcontractors or providers."

As licensed and regulated entities, pharmacies are subject to oversight from state agencies in addition to being subject to OMIG audits. Unlike pharmacies, PBMs are unlicensed businesses bound almost entirely by the terms of their contracts, contracts that include non-disclosure terms. Because PBMs are unregulated, they resist state efforts to examine their business records. In order to conduct a PBM audit, OMIG must have clear statutory authority in state law. Without such a law, Medicaid dollars will continue to pass through a black box sealed with the contracts that are proprietary. It's time to open it up to public scrutiny. The Society supports the proposed authority for OMIG to audit Pharmacy Benefit Managers and in addition urges OMIG to consider joining the effort to enact a new law that requires Pharmacy Benefit Managers to be licensed by the Department of Financial Services as a way to strengthen its position in PBM audits.

Pharmacy claims are routinely audited by Pharmacy Benefit Managers as well as OMIG. While Medicaid audits have clear and accessible protocols, audits of pharmacies by PBMs are conducted without established industry standards or guidelines. Lacking these, PBM audits have become increasingly unfair and abusive. As a result the Society has asked legislators to pass fair pharmacy audit legislation that will establish reasonable rules so that audits of pharmacies are conducted in a manner that is fair to both the pharmacy and the auditing entity. Enacting a law that establishes fair pharmacy audit parameters will become particularly important if this proposal is enacted in the final state budget. In light of the increased pressure on PBMs that is inherent in this budget proposal, pharmacies could face PBM audits that are even more aggressive and unreasonable.

PSSNY supports Comprehensive Medication Management (CMM).

CMM is a medication management service provided by a qualified pharmacist pursuant to a written protocol from a primary care provider. It is designed for patients with a chronic disease or diseases who have not met the clinical goals of therapy, are at risk for hospitalization or otherwise would benefit from additional support from a pharmacist in the appropriate use of prescribed medications. The service is optional for all parties. CMM is Medicaid Redesign proposal developed by the Value-Based Payment Roadmap Workgroup, a committee of healthcare stakeholders convened by the Health Department under DSRIP.

Comments on Medicaid proposals

Professional fee of $10.08

The Health Department is proposing a $.08 increase fee based on input from CMS that professional fees must be reviewed regularly and reflect current cost data. While the Society is relieved that the proposed new fee is not a reduction, we respectfully submit on behalf of our members that the drastically lower drug cost reimbursement enacted as part of last year's budget is yet to be fully implemented along with the current $10 fee. As a result, the impact of 2017 Medicaid rate change cannot be fully assessed at this time.

Reduced OTC coverage and increase OTC co-pay from $.50 to $1.00

Although the Society has not had an opportunity to review the proposed changes in covered OTC products, in recent meetings with Medicaid officials we learned that cough and cold and some digestive relief products are being eliminated. With this loss of Medicaid coverage, patients will be expected to pay cash or go without.

Increasing the co-pay represents an increased burden for beneficiaries and also a reimbursement cut for pharmacies. Medicaid patients are entitled to receive medications whether or not they provide the co-payment. In such cases pharmacies absorb the cost.

Women's Health Agenda

PSSNY supports the Governor's comprehensive Women's Health proposal including mandatory coverage for contraceptive drugs and devices with no co-pays. However, pharmacists have raised a concern about the safety of providing a twelve-month supply of a contraceptive drug at one time. Some contraceptive drugs carry risks. Others have side-effects. If the prescription is changed due to side-effects or other problems, potentially a several-month supply of the product will go to waste.

On behalf of New York's community of pharmacists, thank you for this opportunity to comment on the 2018 Executive Budget. We look forward to continuing discussions on these and other policy matters of interest to you and to our profession.