

February 14, 2018

House Health & Human Services Committee
Attn: Christa Calamas, Staff Director
214 House Office Building
402 South Monroe Street
Tallahassee, FL 32399

Re: Support of HB 351 – Pharmacy Benefit Managers Transparency

Dear Chairman Cummings, Vice Chairman Santiago, and Committee Members:

On behalf of the Alliance for Transparent and Affordable Prescriptions (ATAP), I am writing to express our support for and the importance of HB 351, a bill that seeks to increase transparency and regulation of pharmacy benefit managers (PBMs).

The Alliance for Transparent and Affordable Prescriptions (ATAP) consists of nineteen patient and provider groups who are concerned about the role PBMs play in the rising cost of drugs and reduced patient access to affordable treatment. PBMs are third-party entities that are hired by insurers and health plan sponsors to manage and administer prescription drug benefit plans. They essentially act as middlemen between insurers, drug manufacturers, and pharmacies and thus have a uniquely central role in the drug market, handling everything from setting patient copayment amounts to determining which drugs are covered by which health plans.

Among other functions, PBMs use their intermediary position to negotiate rebates and retroactive discounts with pharmaceutical manufacturers in exchange for including the manufacturer's drug on the PBM's tiered formulary, or the list of approved drugs that the PBM will cover in full or part. A drug's tier placement determines the level of coverage it will receive and therefore how much it will cost patients out-of-pocket and what restrictions are placed on it. PBMs claim to pass a portion of the rebates and discounts they get from manufacturers back to the insurers to help drive down costs for patients, but due to the opaque nature of their contracts, most of these funds appear to go to their bottom line.

Unfortunately, there is very little transparency surrounding PBMs and their role within the delivery system, nor are there any requirements to pass negotiated savings onto payers or patients. In particular, PBMs purportedly subvert a significant portion of the rebates and discounts they get from manufacturers towards their own profit using the tactic of reclassification: because PBMs are

typically only contractually obligated to pass onto plan sponsors a specified portion of manufacturer “rebates” as that term is defined in their contracts with the plans, PBMs exploit the non-transparent nature of their contract negotiations with manufacturers to reclassify a portion of the rebates received as “fees” and other designations, allowing them to keep a significant portion of the rebate amount as profit.

HB 351 seeks to regulate PBM practices by requiring PBMs conducting business in Florida to register with the Office of Insurance Regulation, to be more transparent in their use of maximum allowable cost lists, which are used to determine the amount that the PBM reimburses a pharmacy in its network for dispensing generic drugs. The bill would additionally prohibit PBMs from imposing any cost-sharing requirement that would require a patient to pay at the point of sale an amount greater than the total submitted charges for the prescription drug or the retail price of the drug in the absence of drug coverage under the patient’s insurance plan. Moreover, the bill also takes aim at gag clauses, going a step further than simply prohibiting PBMs from banning pharmacists from discussing lower cost options and instead actively requiring pharmacists to inform their customers of a lower cost alternative for their prescription and whether their cost-sharing obligation exceeds the retail price of their prescription if not using their insurance.

While HB 351 is an important first step in providing a level of oversight that will help protect Florida patients and physicians from at least some of the unfair practices by PBMs, there is much more that must be addressed. As mentioned above, a significant lack of transparency has enabled PBMs to engage in deceptive conduct such as, among other things, reclassifying rebates and discounts as fees and other designations in order to drive up their profit. Additional transparency provisions that require PBMs to disclose pertinent rebate information are therefore vital to understanding the rebate system and its impact on patients in terms of both cost and access, and to ensuring the rebates and discounts negotiated by PBMs ultimately make their way to patients. Moreover, in order to ensure rebates and discounts from manufacturers ultimately make their way to patients, PBMs should be required to pass on an established portion of all manufacturer price concessions, and to consider price concessions as the aggregate amount of the total percentage off a drug’s list price, including all discounts, rebates, and fees, that a PBM negotiated and received from a manufacturer.

That being said, however, HB 351 will nevertheless provide added accountability for PBMs operating in Florida and will go a long way in bringing about a level of transparency to the PBM industry. PBMs have a significant impact on Florida patients and their ability to obtain the medications they need in a timely and affordable manner, and yet very little is known about their role. By requiring PBMs to register with the Office of Insurance Regulation, HB 351 is vital to

provide a minimum level of oversight and regulation for physicians and patients. Furthermore, by imposing restrictions on PBMs regarding cost, the bill will help ensure Florida patients do not pay any more than they must for the medications they need. ATAP therefore strongly urges the Committee to support this legislation and vote in favor of the bill.

ATAP has been working tirelessly to educate state lawmakers on the impact of PBMs and looks forward to working with the Florida legislature and the Office of Insurance Regulation to help provide information and insight into the problematic practices of PBMs. To that end, we have attached a one-pager on the PBM issue that we believe the Committee will find helpful in considering and analyzing the bill.

In sum, the Alliance for Transparent and Affordable Prescriptions requests that you allow and favorably vote in support of HB 351. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', with a long horizontal flourish extending to the right.

Robert Levin, MD
President, ATAP