November 30, 2017

The Honorable Al Redmer, Jr.
Commissioner
Maryland Insurance Administration
200 Saint Paul Place
Suite 2700
Baltimore, MD 21202-2272

The Honorable Lori R. Wing-Heier
Commissioner
Division of Insurance
550 West 7th Avenue
Suite 1560
Anchorage, AK 99501-3567

Re: Prescription Drug Benefit Management Model Act (#22)

Dear Commissioners Redmer, Wing-Heier, and Members of the Health Insurance and Managed Care (B) Committee:

The undersigned organizations representing health care consumers, patients, physicians, and other stakeholders write to request your consideration of our shared priorities for incorporation into the final National Association of Insurance Commissioners (NAIC) Prescription Drug Benefit Management Model Act (Model Act).

Our organizations support the new provisions in the current draft that promote transparency and integrity of prescription drug benefits, and we appreciate the work of the NAIC's Model # 22 Subgroup, under the leadership of J.P. Wieske and Jolie Matthews, to craft the Model Act in an inclusive manner. We are pleased the Model Act contains policies we offered, including provisions that would require the disclosure of drugs covered under a plan's medical benefits and language specifically prohibiting the design of the formulary from being discriminatory. We believe that the Model Act will be an important tool and resource for state legislatures and regulators in further modernizing state regulation of prescription drug benefits, an issue of critical importance to policymakers, insurers, and the millions of consumers we represent across the country.

However, we believe that further attention to the way in which prescription drug benefits are created, maintained and communicated to patients is essential to ensure the Model Act fulfills the needs of consumers. Specifically, we respectfully urge the B Committee to make changes to address the following issues before the Model Act is approved:

Prohibit Mid-Year Formulary and Utilization Management Changes

Once individuals choose a health plan, they are locked-in to that plan (absent qualification for a special enrollment period) until the termination of the plan year. Unfortunately, for patients and prescribers, the drugs included on a formulary and the restrictions around coverage are moving targets. Moreover, as currently drafted, the Model Act would not prohibit a health issuer from marketing a plan as providing expansive formulary coverage and then changing the benefit package and/or utilization management requirements once the individual is enrolled in the plan. When forced to switch medications abruptly, it not only creates confusion, but often results in lower adherence rates and could cause harm. To address this concern, we have strongly urged that health issuers be prohibited from imposing negative formulary changes (e.g., removing prescription drugs from the plan's formulary absent safety issues, moving prescription drugs to a higher formulary tier, or imposing higher cost-sharing on formulary tiers, placing new prior authorization or step-therapy requirements on prescription drugs, etc.) during the plan year. We strongly believe that a "bait and switch approach" is not in the interest of consumers or issuers and a health issuer should be held to the prescription drug coverage it

marketed to consumers, absent limited circumstances (e.g., the availability of a new FDA-prescription drug, when prescription drugs are withdrawn for safety reason).

Improve Formulary Disclosure Information

As currently drafted, the Model Act would permit a health issuer to make available to consumers a formulary (a list of drugs covered under the plan) and a separate document(s) providing prescription drug benefit information. We are concerned that bifurcating the formulary and the benefit information is overly complicated and will prove confusing to consumers – particularly to individuals who will be accessing information online. In addition, as currently drafted the benefit information does not necessarily need to include information on utilization management restrictions (referred to as PBMP) imposed by the issuer. Rather, the benefit information merely has to provide the consumer with a description where to go to obtain this information.

As a result, the consumer may have to refer to at least three different sources of information – a formulary, a prescription drug benefit information document, and a separate document listing PMBP restrictions – before being able to ascertain coverage of her prescription drugs (which, as stated above could change during the course of the plan year). We are concerned that this greatly increases the prospect for consumer confusion and the likelihood that a patient will not be able to ascertain the information needed to make an informed decision about their prescription drug needs. We advocate for greater accessibility of these documents, including the ability of patients to access this information in a single location that requires minimal clicks to locate.

Stronger Conflict of Interest Standards

We are concerned that as currently drafted, the Model Act does not address any potential or actual conflicts of interest that may arise with respect to designees of the health carrier (including Pharmacy Benefit Managers). We would also urge the inclusion of stronger conflict of interest provisions related to the Pharmacy & Therapeutics committee (P&T committee) in the development of formulary and other utilization management tools.

We acknowledge the challenge that some closed health care systems may have with respect to the fact that its employees also are members of the care team and P&T committees. But that scenario certainly does not apply in all situations in the private health insurance market. And even for those closed systems, we believe that it remains important to identify and mitigate conflicts of interest wherever possible. We believe that the inclusion of stronger conflict of interest provisions will help to protect consumers' interest.

Thank you for considering our comments, which we hope will be incorporated into the Model Act before it moves forward to the Executive Committee for adoption. We stand ready to work with you to strengthen the Model Act. If you have any questions, please contact Anna Howard (anna.howard@cancer.org).

Sincerely,

NATIONAL ORGANIZATIONS

American Academy of Dermatology Association
American Academy of Family Physicians
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology-Head and Neck Surgery

American Academy of Child and Adolescent Psychiatry
American Cancer Society Cancer Action Network
American College of Radiology
American College of Rheumatology
American Lung Association
American Medical Association
American Society for Dermatologic Surgery Association
American Society for Reproductive Medicine
American Society of Clinical Oncology
American Urological Association
Disability Rights Education and Defense Fund
National Alliance of State & Territorial AIDS Directors
National Alliance on Mental Illness
National Center for Transgender Equality
National Hispanic Medical Association
Out2Enroll
The AIDS Institute
US PIRG

STATE ORGANIZATIONS

Arkansas Medical Society
California Medical Association
California Rheumatology Alliance
Chicago Medical Society
Colorado Consumer Health Initiative
Colorado Medical Society
Community Service Society of New York
Connecticut State Medical Society
Hawaii Medical Association
Idaho Medical Association
Idaho Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
Kentuckiana Rheumatology Alliance
Kentucky Medical Association
Maine Medical Association
Massachusetts Medical Society
MedChi, The Maryland State Medical Society
Medical Association of Georgia
Medical Association of the State of Alabama
Medical Society of Delaware

Medical Society of New Jersey
Medical Society of the District of Columbia
Medical Society of the State of New York
MidWest Rheumatology Association
Minnesota Medical Association
Mississippi Arthritis and Rheumatism Society
Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
New Jersey Citizen Action
New Mexico Medical Society
New York State Rheumatology Society
North Carolina Rheumatology Association
North Dakota Medical Association
Ohio State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rheumatology Alliance of Louisiana
Rheumatology Association of Iowa
Rheumatology Association of Nevada
South Dakota State Medical Association
Tennessee Medical Association
Vermont Medical Society
Voices for Utah Children
Wisconsin Rheumatology Association

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