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February 17, 2020

Representative Jene Vickrey
Kansas State Capitol
300 SW 10th St, RM 276-W
Topeka, KS 66612

Re: Oversight and Regulation of PBMs HB 2598 - Opposed

Dear Chairman Vickrey and Committee Members:

I am writing today to convey Medica's opposition to House Bill 2598 related to oversight and regulation of pharmacy benefit managers (PBMs).

Medica is an independent and nonprofit health care organization with approximately 1 million members in nine states, and has offered coverage in the Kansas individual market since 2017. Medica's mission is to be the trusted health plan of choice for our customers, members, partners, and our employees.

My organization is opposed to HB 2598 due to specific concerns regarding network mandates included in HB 2598 and items in the bill that directly benefit pharmaceutical manufacturers. These concerns are numerous, but I will highlight three examples of specific items within the bill that should be adjusted or removed if the bill moves forward:

- Network access requirements in section 5: Supporters of this provision may argue these requirements are the same as Medicare Part D. They are not. In order to align these network adequacy requirements with Medicare Part D, the language on page 7, lines 21-22 should be amended to allow mail order pharmacies to be used to meet access standards for retail pharmacy networks. I respectfully request the committee make this change in the bill.
- Specialty pharmacy mandate in section 8: Medica has serious concerns about this section's impact on patient safety and respectfully request that it be removed from the bill. Specialty pharmacies serve a particularly vulnerable patient population and must have specific expertise in the medications and their storage requirements. As a result, specialty pharmacy vendors are required to have specific patient education acumen and customer service practices that meet the needs of these vulnerable patients. These requirements, combined with necessary storage, handling, and delivery processes, are critical to serve these patients. Allowing any pharmacy to be a specialty pharmacy puts patients in harm's way. Secondly, but also critically important, this section of the bill potentially bans free market, competitive procurements for selecting one specialty pharmacy vendor and may lead to millions of dollars in unnecessary waste. Our health care system must have the ability to drive efficiency by requiring specialty pharmacies, just like any other vendor, to compete for business. Exempting specialty pharmacies from basic patient safety measures and competition will put patients at risk and lead to unnecessary waste in our health care system.

- Patient cost-sharing requirements in section 10: The language on page 10, lines 13-14 requires PBMs to allow pharmacies to accept third-party payments for drugs, which would include pharmaceutical company co-pay coupons. Pharmaceutical companies use co-pay coupons to avoid difficult negotiations with PBMs by incenting patients to use their high-priced drugs. The cost of these co-pay coupon programs can be built into the manufacturer's drug costs, leading to higher drug prices.¹ This language is a free giveaway to pharmaceutical manufacturers. We also note that the federal agencies have indicated such copay coupon programs may run afoul with IRS rules for high-deductible health plans, and may cause enrollees in those plans to owe a significant tax penalty. I respectfully request these two lines be removed from the bill.

Medica is not opposed to other concepts or goals of HB 2598, such as licensure of PBMs or general transparency in their revenue and expenditures. However, my organization is opposed to the onerous nature of the licensure and reporting requirements in the bill. PBM licensure bills have been enacted in several states within our nine-state service area, so Medica has direct experience working with our PBM partners and regulators in those states to understand how to comply with these new requirements. Some states in Medica's service area have taken targeted approaches to PBM legislation, engaging with stakeholders to pass bills that are clear and align with the intent to promote greater transparency into the value proposition of PBMs. Other states have passed bills similar to HB 2598 that expand the scope of that intent to include a number of broad-reaching and complex provisions.

As a result of our experience, I implore you to heed one piece of advice as you consider this bill: please work with the PBM industry to understand their concerns with the bill and work to address many of their concerns. Confusing and incoherent laws have been enacted in other states in part due to a lack of negotiation and vetting with the PBMs, which has led not only to frustration among pharmacies, health plans, PBMs, and state regulators, but also protracted litigation, with the Supreme Court poised to determine whether states can regulate PBMs under ERISA this summer. Please work with the PBM industry in order to avoid confusion and unintended consequences if the bill is enacted into law.

Thank you for your consideration and do not hesitate to contact me if you have any questions.

Sincerely,



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¹ <https://www.pcmnet.org/wp-content/uploads/2016/08/pr-dated-07-14-12-visante-copay-coupon-study.pdf>