August 15, 2012

Office of the Honorable Mike Turzai  
110 Main Capitol Building  
PO Box 202028  
Harrisburg, PA 17120-2028

As a follow-up to our discussion in Chicago, I am once again writing on behalf of the National Community Pharmacists Association (NCPA) in strong support of H.B. 727. This legislation is urgently needed to provide community pharmacy with fair and common sense protections against abusive PBM pharmacy auditing practices. NCPA respectfully requests that Pennsylvania take the action necessary to favorably move this legislation and join the approximately twenty-three other states that have enacted laws to protect their small businesses and healthcare providers. Over the past six months alone, twelve states have enacted audit legislation into law.

NCPA represents America’s independent community pharmacists, including the owners of more than 23,000 community pharmacies, pharmacy franchises and chains. Together, they employ over 300,000 full-time employees and dispense nearly half of the nation’s retail prescription medicines. In Pennsylvania alone there are over 1,000 community pharmacies which employ a projected 10,642 residents. NCPA members represent the small business owners which are vital to the nation’s “Main Street economy” as well as serve as the most readily accessible healthcare practitioners.

NCPA has long championed the need for greater oversight of pharmacy benefit managers (PBMs) and many of their questionable practices due to the problems our members and their patients continue to face. PBMs have been allowed to operate virtually unchecked since their inception—slowed only by the increasing amount of litigation alleging fraudulent and deceptive business practices filed against them each year and extremely limited regulation. One of the most notable problems NCPA members face in today’s pharmacy marketplace, is the issue of abusive audit practices. NCPA applauds states that have implemented measures to protect community pharmacists and small business owners against abusive audits and again respectfully requests that Pennsylvania be the next to take this important step.

Let me be clear, the provisions of H.B. 727 do not pertain to instances where true fraud and abuse exist. The opponents of H.B. 727 who state that enacting this legislation would increase true fraud and abuse are simply wrong. NCPA and our members fully support the need for business audits to catch deceptive, dishonest and criminal behavior. The audit provisions this legislation relates to are those in which simple administrative errors, some not even the fault of the pharmacist, are unjustly penalized. Some penalties reach into the tens or even hundreds of thousands of dollars. These are also instances where the correct medication, was dispensed to the correct person, at the correct price. I have attached a document listing just a handful of Pennsylvania pharmacist’s experiences with such abusive tactics and a state survey demonstrating the statistics of PBM audits on Pennsylvania small businesses.

As you can see within the above mentioned documents, rather than legitimately using the audit process to guard and protect against fraud, many PBMs now view the pharmacy audit process as a profitable revenue stream for the company. These audits can claim hundreds of thousands of dollars for nothing more than basic administrative or typographical mistakes. Many PBMs go well beyond the basic intent of an audit, to catch fraud and abuse, and instead focus on these typographical or administrative errors as a basis to recoup money from the pharmacy. In many cases, if a PBM auditor identifies an administrative error, he or she will “take back” 100% of the value of the prescription and all refills—a severe financial penalty that is out of proportion to the gravity of the offense.
Another egregious practice many PBMs employ in order to “ensure” that discrepancies will be found is to establish elaborate record keeping requirements well in excess of what is required under state law, federal law or by other PBMs. Pharmacies typically maintain contracts with multiple PBMs. The result is a myriad of conflicting documentation requirements that can make operating a busy pharmacy and providing patient care an even greater challenge.

PBM’s deceptive business practices can even be observed while negotiating fair pharmacy audit legislation and NCPA requests that you remain vigilant of such attempts. The PBM industry will amend seemingly harmless language onto these bills that in reality weakens the intent and provides them with “loopholes” to continue to recoup money unnecessarily from pharmacies. NCPA has experienced such tactics across the country. To demonstrate just a handful of such instances I have also attached a document identifying examples of such amendments and how they impact the intent of this legislation.

In conclusion, NCPA urges the support and favorable movement of H.B.727—legislation that will provide pharmacies an understandably needed degree of protection against the overaggressive and far reaching PBM audit practices. NCPA offers our full support for this legislation and hopes to be notably involved in its progression within the Pennsylvania legislature. Community pharmacists understand that in business there must be audits to identify those instances where true fraud occurs. NCPA is confident that once you review H.B.727 you will find that it simply sets reasonable standards to ensure that audits be used for their true intent and cannot be utilized to merely increase PBMs profit margins.

If you have any questions about the information contained in, or attached to this letter or wish to discuss in greater detail, please do not hesitate to contact me at matt.diloreto@ncpanet.org or at (703) 600-1223.

Sincerely,

Matthew J. DiLoreto
Director, State Government Affairs