



June 9, 2023

Michele Estrada
Department of Insurance and Financial Services
Office of Research, Rules, and Appeals
P.O. Box 30220, Lansing, MI 48909-7720

RE: R 500.31 – 500.39 Pharmacy Benefit Manager Licensure and Regulation Act

Dear Ms. Estrada:

On behalf of our member pharmacies operating in Michigan, the National Association of Chain Drug Stores (NACDS) is pleased to submit this letter in support of the Department of Insurance and Financial Services’ (DIFS) proposed rule regarding pharmacy benefit manager (PBM) licensure and regulation. We urge the Department to bring to bear its full enforcement authority to ensure that PBMs operating in the state do not bypass laws meant to support pharmacies as they fulfill their duty to deliver reliable services to the patients who trust them.

NACDS supported the Michigan Legislature’s efforts in 2022 to pass comprehensive legislation that would provide relief to the state’s pharmacies and patients from the unfair and abusive tactics commonly employed by PBMs. The proposed rules would add another layer of protection by giving the Department enforcement authority to uncover and penalize PBM misconduct, including revoking the ability of PBMs to operate in the state if they do not comply.

Another crucial piece in enforcement is the ability for DIFS to uncover wrongful conduct based on complaints filed by patients and pharmacies. A public complaint process will help provide DIFS with a line of sight into PBM tactics prohibited by the Act that directly affect patients and pharmacies at the store level. Therefore, NACDS asks that the Department develop a simple and reliable filing process for complaints.

Additionally, NACDS wishes to affirm its understanding that the state has the authority to establish statutory minimum and other standards for PBMs that serve state-regulated health plans. And to a limited extent, states may also regulate PBMs that serve self-insured Employee Retirement Income Security Act of 1974 (ERISA)-regulated group health plans. Under *PCMA v. Rutledge*, the U.S. Supreme Court determined that state regulations that do not directly affect “central matters of plan administration or interfere with nationally uniform plan administration” are not preempted by ERISA. Accordingly, we encourage the state to ensure the application of the protections of the law to self-insured plans, in the same way, it would for other plans, to the extent the law does not directly impact plan administration.

NACDS thanks DIFS for the opportunity to comment on this proposed rule and applauds the Department for taking this key step in the process to ensure PBM accountability and transparency. For questions or further discussion, please contact Jill McCormack, Director of State Government Affairs, at JMcCormack@nacds.org.

Sincerely,

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer