NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

November 7, 2024

Alan McClain
Arkansas Commissioner of Insurance
1 Commerce Way
Little Rock, AR 72202

Re: Emergency Rule 128, Pharmacy Benefits Manager Compensation Requirements for Network Adequacy, Fair and Reasonable Pharmacy Reimbursements

Dear Commissioner McClain,

On behalf of our members operating in Arkansas, the National Association of Chain Drug Stores (NACDS) is writing to provide a comment for the record in support of Emergency Rule 128, Pharmacy Benefits Manager Compensation Requirements for Network Adequacy, Fair and Reasonable Pharmacy Reimbursements.

Pharmacy reimbursement should be comprised of two parts: 1) the product cost; and 2) a professional dispensing fee across payer markets to help ensure reasonable reimbursement and sustainable pharmacy services for beneficiaries. The dispensing fee is typically calculated to incorporate the costs of a pharmacist's time reviewing the patient's medication history/coverage, filling the container, performing a drug utilization review, overhead expenses (rent, heat, etc.), labor expenses, patient counseling, and more to provide quality patient care.[1] In order to maintain availability and access to certain prescription drugs for Arkansans, it is imperative that these cost considerations include *both* the product costs of the drug and a professional dispensing fee, a core component of pharmacy reimbursement.

Emergency Rule 128 acknowledges the importance and value of adequate pharmacy dispensing reimbursement when it states that "… the current pharmacy reimbursement minimums under the [Arkansas Pharmacy Benefits Manager Licensure Act], or payments within a close range to minimums of National Average Drug Acquisition Cost, or minimum allowable cost, that do not also include a reasonable cost to dispense to pharmacies impairs the sustainability of network adequacy for pharmacy services for health benefit plans." Emergency Rule 128 further acknowledges the critical role pharmacy dispensing plays in the provision of quality patient care when it states that "A fair and reasonable cost to dispense shall be calculated commiserate with the time, labor, supplies, and other administrative costs associated with the dispensing of a drug by a pharmacy."

[1]CMS defines the professional dispensing fee at 42 CFR § 447.502 https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-447/subpart-I/section-447.502

As an industry, Pharmacy Benefit Managers (PBMs) have been highly unregulated. As you know, PBMs claim to reduce prescription drug costs, but their business practices are key components of skyrocketing healthcare spending. PBM activities include unfair and opaque dealings with pharmacies with respect to reimbursement, network design, audit practices, constructing artificial barriers that limit patient choice and competition, self-referring patients to their own mail-order and/or retail operations, switching patients to more expensive medications to benefit the PBM, and questionable use and disclosure of sensitive patient information. PBMs claim that their ability to negotiate with drug manufacturers and pharmacies reduces overall prescription drug costs. However, despite their claims, overall prescription drug spending continues to steadily increase while pharmacies across the state reporting they are subject to negative reimbursement from a significant number of health benefit plans and PBMs.

In July 2024, the United States Federal Trade Commission released its Interim Staff Report highlighting how PBMs' actions inflate drug costs and increasingly put financial pressure on pharmacies by under-reimbursing them for the provision of critical healthcare services.[2] "Over the past two decades, the PBM industry has undergone substantial change as a result of horizontal consolidation and vertical integration. The top three PBMs processed nearly 80 percent of the approximately 6.6 billion prescriptions dispensed by U.S. pharmacies in 2023, while the top six PBMs processed more than 90 percent."[3] "In 2016, the combined revenue of [UnitedHealth Group Inc., CVS Health Corp., The Cigna Group, and Humana Inc.] totaled $456 billion and equaled 14 percent of national health expenditures in the United States. Today, their combined revenue exceeds $1 trillion and equals 22 percent of national health expenditures."[4]

Simply put, without meaningful actions, like Emergency Rule 128 which protects patients by prohibiting health plans and PBMs administering benefits on behalf of a health plan from recouping or recovering any increased costs to dispense from a patient at the point of sale through increased co-insurance, co-payment, or deductibles, more dollars will continue to flow to PBMs instead of reducing Arkansans' prescription drug costs and safeguarding access to their trusted and convenient pharmacies.

Without necessary guardrails to ensure reasonable and sufficient reimbursement for community pharmacies across Arkansas, inadequate or below-cost reimbursements could force pharmacies to either operate at a loss, be unable to stock certain medications, or worse, potentially close their doors permanently—negatively impacting Arkansans by ultimately worsening patient outcomes, reducing medication adherence, and increasing prescription abandonment and hospitalizations. Careful consideration of the impact on community pharmacies and the Arkansans they serve is both necessary and invaluable to help avoid preventable adverse downstream consequences on patient access to essential medications and overall health outcomes.

The requirements for fair and reasonable costs to dispense encompassed in Emergency Rule 128 are needed to protect pharmacy providers from the abusive PBM business practices that can jeopardize the future of pharmacy as well as the sustainability of providing pharmacy services and ultimately patient access to care. Arkansans rely on community pharmacies for important healthcare services like health screenings, disease management, vaccinations, testing services, patient counseling, essential medications, and more. Emergency

[2] U.S. Federal Trade Commission, Interim Staff Report, "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies". https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.
[3] Id. at 2.
[4] Id. at 6.

Rule 128 rule will ultimately protect vital access to lifesaving prescription drugs and pharmacy services for Arkansans across the state.

For questions or further discussion, please contact NACDS at MStaples@nacds.org (Mary Staples, Director, State Government Affairs).

Sincerely,

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer
National Association of Chain Drug Stores