



AND THE LAW

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PHARMACY BENEFIT MANAGER REGULATION

A first step in the regulation of Pharmacy Benefit Managers (PBMs) occurred at the quarterly meeting of the National Council of Insurance Legislators (NCOIL) in December 2018. That group's Health, Long Term Care and Health Retirement Issues Committee passed a Model Act providing for the regulation of PBMs by state insurance commissioners. National Community Pharmacists Association's (NCPA) regulatory affairs Vice President Ronna Hauser said, "We believe the act is a robust chassis that will put state insurance commissioners in a better position to regulate PBMs." Many pharmacists may not have heard of NCOIL nor are they aware of how insurance is regulated in the United States.

In 1944, Congress passed the McCarran Ferguson Act which provided for the regulation of the insurance industry by the states rather than the Federal Government. As part of this regulatory design, Congress mandated that states must adopt an Unfair Trade Practices Act by 1948. The states did this through the adoption of a Model Act. Model Acts provide a template for state legislatures to review and adopt in their state. This eases the drafting burden on the legislatures while provided some uniformity across the several states. The National Association of Boards of Pharmacy provides the same service with its Model State

Pharmacy Act.

To facilitate the state regulation of insurance, there are two groups that provide assistance to the state legislatures and departments of insurance. The National Association of Insurance Commissioners (NAIC) was founded in 1871 and establishes standards, best practices, and coordination of regulatory oversight. NAIC also drafts and proposes Model Acts. NCOIL was founded in 1969 and brings together legislators from the states. NCOIL functions to educate legislators on insurance issues and to create Model Acts for states to adopt.

So what does the adoption of this Model Act mean for pharmacy? There have been attempts by a few states to regulate PBMs. These attempts have not been consistent in their approach and some have not survived judicial scrutiny. The Model Act provides a consistent approach to PBM regulation. The Model Act specifically grants the state insurance commissioner the authority to regulate PBMs and to promulgate rules covering items such as network adequacy requirements, pharmacy compensation, and prohibited market conduct practices.

Aside from the legal technicalities, the Model Act facilitates the passage of the law in the various states. The fact that a Model

Act has been drafted highlights to state legislators the severity of the issue. The absence of a Model Act can sometimes be used by opponents to advocate that the issue isn't that important simply because there is no Model Act addressing it. The drafting of a law takes a lot of research time and drafting effort. As mentioned earlier, the Model Act relieves the state legislators of this burden and makes it easier for them to pass the law.

The passage of the Pharmacy Benefits Manager Licensure and Regulation Model Act is a positive step in the right direction for the profession of pharmacy. However, advances like this are not easy and are not free. NCPA worked with NCOIL members for more than nine months on the language of the Model Act to make sure that it addressed pharmacy owners' concerns. This highlights again the need for pharmacists to be involved in the legislative process. As a previous article in this series said, "Even if we don't get involved in the making of laws, we will be subject to them nonetheless. Pharmacists can ill afford to be impacted by laws drafted by those who know nothing about pharmacy." The Model Act is available, but that is not the end of the story. Now the scene shifts to the state legislatures. The Model Act will likely face stiff opposition in each state where it is introduced. Pharmacists need to be prepared to get involved and advocate for passage of the Model Act. If you don't, who will?

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