

TESTIMONY
New York State Senate and New York State Assembly
FY 2024 Joint Legislative Budget Hearing – Health
February 28, 2023

Submitted by Kelly Memphis, Director of Government Affairs, Healthcare Distribution Alliance

Thank you for the opportunity to express some strong concerns with the Executive Budget Health & Mental Hygiene Article VII Part Y Subpart B “Prescription Drug Pricing and Transparency Act” – **Reporting of Drug Price Increases and Registration of Pharmacy Services Administrative Organizations.**

HDA is the national trade association representing healthcare wholesale distributors — the vital link between the nation’s pharmaceutical and healthcare manufacturers and more than 180,000 pharmacies, hospitals, and other healthcare settings nationwide. Our members handle over 93% of essential prescription and healthcare products from over 1,500 manufacturers, and work around the clock to ensure these products are delivered where and when patients and consumers need them. In New York, our members serve over 4,670 customers.

Reporting of Drug Price Increases (§3004)

While HDA is in favor of transparency, we are greatly concerned that the proposed language in this session would unintentionally create serious drug access and shortage concerns for New York Patients.

We respectfully request the removal of “wholesalers” from this section.

Distributors are unlike any other supply chain participants – their core business does not involve manufacturing, marketing, prescribing or dispensing medicines, nor do they set the Wholesale Acquisition Cost (WAC), influence prescribing patterns, or determine patient-benefit design. Rather, it is the manufacturer that sets or changes a drug’s WAC.

The distributor’s primary role is to serve as a conduit for medicines to travel from manufacturer to the provider while making sure the supply chain is fully secure, fully functional, and as efficient as possible. Due to these efficiencies, HDA member companies generate between \$33 and \$53 billion in estimated cost savings each year to our nation’s healthcare system.

The inclusion of wholesale distributors within subsection (a)(1) does not accurately reflect a wholesaler's role in the supply chain and is not necessary to achieve the legislative intent. Manufacturers are responsible for setting and changing the WAC of the products they develop and release into the market; these pricing decisions are NOT under the purview of the wholesaler. ***We respectfully request the removal of wholesalers from section (a)(1).***

We also respectfully request the complete removal of (a)(2), which would prohibit wholesalers from distributing drugs that have not been appropriately reported under these provisions.

Prohibiting wholesale distributors from distributing medications within New York unless a report is made would be extremely disruptive to the timely delivery of medications. Wholesalers operate 24-hours a day, 365 days a year, shipping nearly 15 million products on behalf of 1,500 manufacturers to all pharmacies, hospitals, nursing homes and other points of care across the nation. Given the volume of product and number of manufacturers they work with, it would be logistically infeasible for a wholesaler to monitor for the filing of reports on various price increases for all of the products they handle. This would result in providers and patients experiencing long delays before receiving essential medication - or could ultimately prevent the product from entering the state entirely.

Not allowing a wholesaler to fulfill a pharmacy's order based on manufacturer's reporting status would at best create substantial delays in a patient's access to prescription medication, and at worst threaten their access altogether.

While HDA is fully committed to drug pricing transparency, we urge the State to consider the ramifications of this proposal and the negative impact it will undoubtedly have on patients.

Pharmacy Services Administrative Organizations (§3006 & §3007)

We respectfully request that these sections be omitted from the final Budget because they do not accurately reflect the role and function of PSAOs.

These sections greatly misrepresent the function and role of pharmacy services administrative organizations (PSAOs), and consequentially would disrupt or prevent the ability of PSAOs to function in the State. This would then significantly impede the ability of independent and community pharmacies to operate and provide essential services to New York's patients. PSAOs are simply administrative entities that enable pharmacists who do not have in-house administrative staff to be where they belong – at the counter serving their patients.

PSAOs do not negotiate drug pricing on behalf of the pharmacy with PBMs and do not impact prescription drug costs, and therefore should not be included in these provisions of the budget.

For a flat monthly fee (usually around \$200/month), PSAOs provide independent and community pharmacies with "back office" administrative support, including managing pharmacy benefit manager (PBM) infamous "take it or leave it" contracts, submitting reimbursement claims, and conducting audits. PSAOs are often confused with PBMs, however they are vastly different and have little in common.

- PSAOs do **not** retain any portion of their pharmacy clients' reimbursement, influence networks, or dictate reimbursement rates. They do not retain any revenue beyond a flat transparent service fee.
- PSAOs have **no role** in the formulary design of any health benefit plan (i.e., negotiating rebates or fees with manufacturers).
- PSAOs are **not** involved with negotiating rebates, discounts, or fees and their terms.
- PSAOs are voluntary services. Pharmacies must contract with a PBM for the livelihood of their business, whereas using a PSAO is entirely optional. Around 80% of independent pharmacies rely on PSAOs for their administrative support.
- While some wholesale distributors offer PSAO services to pharmacies, the two are separate businesses and often separate legal entities. Wholesale distributors do not negotiate reimbursements with PBMs on behalf of pharmacies, and PSAOs do not play a role in the distribution of pharmaceutical products.
- Additionally, not all PSAOs are associated with wholesale distributors, there are PSAOs that operate as independent businesses. **Whether independent or wholesaler- associated, all PSAOs operate the same way on the same flat service fee-based model.**

These provisions, which intend to bring greater transparency to prescription drug pricing, would actually further compromise the ability of independent pharmacies to operate and deliver critical health services to New York patients, particularly those in rural and urban "pharmacy deserts." PSAOs have no role in drug pricing, but in fact simply bring increased efficiency and back-office support to independent pharmacies struggling to provide vital patient services in a highly complex contracting and regulatory environment.

While HDA is fully committed to drug pricing transparency, we implore the State to consider the ramifications of these proposals and the negative impact it will undoubtedly have on patients. We respectfully and urgently request that the language targeting PSAOs is rejected by the Legislature and not included in the final budget.

Thank you again for this opportunity to comment.

Kelly Memphis
Director, State Government Affairs
Healthcare Distribution Alliance