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Community Pharmacy Association of New York State

**Focus of Community Pharmacy:
Access. Trust. Wellness.**

**Testimony for the
Joint Legislative Budget Hearing on Health/Medicaid**

February 5, 2019

9:30AM

Hearing Room B

Community Pharmacy Association of NYS

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Honorable Chairs Krueger and Weinstein, Senator Rivera, Assembly Member Gottfried and other distinguished members of the Committee, my name is Mike Duteau. I am a pharmacist and an employee owner at Kinney Drugs and President of the Community Pharmacy Association of New York State. We would like to thank you for your strong past support of community pharmacy in New York and for the opportunity to testify today related to the State Fiscal Year (SFY) 2019-20 State Budget.

The Community Pharmacy Association of New York State represents pharmacies of all types and sizes throughout the State. Together, we are focused on protecting patient access to pharmacy care and strengthening the role that pharmacists can play in improving patient health outcomes while reducing costs. In this regard, we would like to comment on four specific budget proposals as outlined below.

(1) SUPPORT: Regulation of Pharmacy Benefit Managers (Parts I and B of S.1507/A.2007)

The Executive Budget released on January 15th, includes two proposals to regulate Pharmacy Benefit Managers (PBMs) in New York. The first includes a series of provisions which:

- Require PBMs that are involved with both the commercial market and Medicaid be initially registered with the State Department of Financial Services (DFS) and follow minimum standards established in regulation by DFS, in consultation with the State Department of Health (DOH). Registration would run through 2020.
- On or after January 1, 2021, require PBMs be licensed by DFS and follow standards focused on conflicts of interest, deceptive practices, anti-competitive practices, unfair claims practices and others protecting consumers, as set forth by DFS, in consultation with DOH, in regulation.
- Require PBMs to follow annual reporting requirements due July 1st each year beginning in 2020 including disclosure of any financial incentive or benefit for promoting the use of certain drugs or other arrangements affecting health insurers, their insureds and any other information related to the business, financial condition or market conduct of the PBM.
- Assess PBMs for the operating expenses of DFS solely attributable to regulating PBMs.
- States that failure to comply with such requirements could result in revocation of registrations or licenses.

We support the need to regulate PBMs in New York. They are currently the one entity in the healthcare continuum that is not regulated like pharmacies, wholesalers, manufacturers, hospitals, long term care facilities, health insurance plans/MCOs and other health providers. We believe the time is now to close that gap as other states have and ensure that the state has oversight over PBMs.

The Executive Budget includes a second PBM-related proposal specific to Medicaid Managed Care (MMC). It requires contracts between MMC plans and PBMs to be limited to the actual ingredient costs, a dispensing fee and an administrative fee for each claim processed, which may be established by DOH. In essence, the proposal requires "pass through" pricing from the State through the MCO/PBM to the pharmacy under Medicaid.

We are also supportive of this proposal to ensure that the State uses a transparent model of payment under MMC, as other states are similarly doing. We would welcome the opportunity to work with you to consider whether additional safeguards may be needed to ensure that PBMs cannot lower pharmacy reimbursement or utilize other strategies to comply with this proposal that could negatively impact community pharmacies and the patients they care for.

(2) OPPOSE: Increase in Copays for Medicaid OTCs (Part B of S.1507/A.2007)

The Executive Budget also includes a proposal to increase Medicaid co-pays on over the counter (OTC) products from 50 cents to \$1. In the interest of ensuring patient access to needed medications, we are concerned that any increased in Medicaid copayments can be difficult for patients to afford. Some may forego OTC products if this increase is put in place which could ultimately lead to a higher cost to the state due to resulting medical conditions or prescribing of more expensive prescription medications. Further, patients enrolled in Medicaid have the ability to refuse to pay copayments. Our members do report the nonpayment of copays and in some cases, extremely high rates of uncollectible copays. As a result, community pharmacy would be bearing these additional costs further reducing pharmacy reimbursement which can be just at or even below actual costs.

For these reasons, we respectfully urge the Legislature to reject this proposal in the final budget as you have done in the past.

(3) OPPOSE: Reduction in Medicaid OTC Coverage (Part B of S.1507/A.2007)

Additionally, the Executive Budget includes a proposal to reduce Medicaid coverage of certain OTCs by allowing the Health Department to change such coverage by emergency regulation. We are concerned that if Medicaid no longer covers these OTC products, patients may be unable to afford to purchase them. As a result, this could jeopardize patient access to needed medications and ultimately their health.

We urge you to reject this proposal in the final budget.

(4) OPPOSE: Any Proposal to Establish an Opioid Assessment or Tax that could be passed down to Pharmacies/Patients

While it is important to note that the Executive Budget released on January 15th did not include any proposals related to opioid drug assessments or taxes, we are very concerned that the 30-day budget amendments scheduled to be released by February 14th could. Last year's final budget included an opioid assessment on entities selling or distributing opioids in New York. With your help the final budget and subsequent guidance documents to implement the law make it clear that pharmacies and patients could not be responsible for paying the assessment.

On December 19th, a federal judge struck down New York's Opioid Stewardship Act, on the grounds that the law placed an unconstitutional burden on interstate commerce. We are very concerned that a new proposal could be put forward in an effort to address the judge's decision which allows those that sell or distribute opioids to pass the costs of the state's assessment down

to pharmacies and patients. This is patently unfair and would simply serve to generate revenue for the state, while taxing those that need the medications and/or dispense them.

Patients and pharmacies do not produce or prescribe these medications. When pharmacies receive legitimate prescriptions they fill it for their patients. A tax that can be passed down to pharmacies/patients could impact legitimate patient access (individuals with cancer or other acute pain, in hospice, or those with serious injuries like veterans) to these drugs if pharmacies are forced to pay a tax each time a drug in this class is dispensed. Most importantly, with pharmacies often being paid at "below cost" reimbursement, this tax could force some pharmacies to make service reductions or close.

Obviously, we await the 30-day budget amendments but if they do include a problematic proposal as described above, we would respectfully ask for your help to ensure that community pharmacies and patients are not be put in the untenable position of paying an opioid tax.

Thank you for your consideration of our comments regarding the SFY 2020 budget. The goal of our members is to ensure patient access to high quality pharmacy and related care throughout the State. Please continue to see our Association and members as a resource on any medication or health care topic where we can provide insights or assistance.