November 30, 2017

The Honorable Al Redmer, Jr.
Commissioner
Maryland Insurance Administration
200 Saint Paul Place
Suite 2700
Baltimore, MD 21202-2272

The Honorable Lori R. Wing-Heier Commissioner Division of Insurance 550 West 7<sup>th</sup> Avenue Suite 1560 Anchorage, AK 99501-3567

### Re: Prescription Drug Benefit Management Model Act (#22)

Dear Commissioners Redmer, Wing-Heier, and Members of the Health Insurance and Managed Care (B) Committee:

The undersigned organizations representing health care consumers, patients, physicians, and other stakeholders write to request your consideration of our shared priorities for incorporation into the final National Association of Insurance Commissioners (NAIC) Prescription Drug Benefit Management Model Act (Model Act).

Our organizations support the new provisions in the current draft that promote transparency and integrity of prescription drug benefits, and we appreciate the work of the NAIC's Model # 22 Subgroup, under the leadership of J.P. Wieske and Jolie Matthews, to craft the Model Act in an inclusive manner. We are pleased the Model Act contains policies we offered, including provisions that would require the disclosure of drugs covered under a plan's medical benefits and language specifically prohibiting the design of the formulary from being discriminatory. We believe that the Model Act will be an important tool and resource for state legislatures and regulators in further modernizing state regulation of prescription drug benefits, an issue of critical importance to policymakers, insurers, and the millions of consumers we represent across the country.

However, we believe that further attention to the way in which prescription drug benefits are created, maintained and communicated to patients is essential to ensure the Model Act fulfills the needs of consumers. Specifically, we respectfully urge the B Committee to make changes to address the following issues before the Model Act is approved:

### **Prohibit Mid-Year Formulary and Utilization Management Changes**

Once individuals choose a health plan, they are locked-in to that plan (absent qualification for a special enrollment period) until the termination of the plan year. Unfortunately, for patients and prescribers, the drugs included on a formulary and the restrictions around coverage are moving targets. Moreover, as currently drafted, the Model Act would not prohibit a health issuer from marketing a plan as providing expansive formulary coverage and then changing the benefit package and/or utilization management requirements once the individual is enrolled in the plan. When forced to switch medications abruptly, it not only creates confusion, but often results in lower adherence rates and could cause harm. To address this concern, we have strongly urged that health issuers be prohibited from imposing negative formulary changes (e.g., removing prescription drugs from the plan's formulary absent safety issues, moving prescription drugs to a higher formulary tier, or imposing higher costsharing on formulary tiers, placing new prior authorization or step-therapy requirements on prescription drugs, etc.) during the plan year. We strongly believe that a "bait and switch approach" is not in the interest of consumers or issuers and a health issuer should be held to the prescription drug coverage it

marketed to consumers, absent limited circumstances (e.g., the availability of a new FDA-prescription drug, when prescription drugs are withdrawn for safety reason).

### **Improve Formulary Disclosure Information**

As currently drafted, the Model Act would permit a health issuer to make available to consumers a formulary (a list of drugs covered under the plan) and a separate document(s) providing prescription drug benefit information. We are concerned that bifurcating the formulary and the benefit information is overly complicated and will prove confusing to consumers – particularly to individuals who will be accessing information online. In addition, as currently drafted the benefit information does not necessarily need to include information on utilization management restrictions (referred to as PBMP) imposed by the issuer. Rather, the benefit information merely has to provide the consumer with a description where to go to obtain this information.

As a result, the consumer may have to refer to at least three different sources of information — a formulary, a prescription drug benefit information document, and a separate document listing PMBP restrictions — before being able to ascertain coverage of her prescription drugs (which, as stated above could change during the course of the plan year). We are concerned that this greatly increases the prospect for consumer confusion and the likelihood that a patient will not be able to ascertain the information needed to make an informed decision about their prescription drug needs. We advocate for greater accessibility of these documents, including the ability of patients to access this information in a single location that requires minimal clicks to locate.

## **Stronger Conflict of Interest Standards**

We are concerned that as currently drafted, the Model Act does not address any potential or actual conflicts of interest that may arise with respect to designees of the health carrier (including Pharmacy Benefit Managers). We would also urge the inclusion of stronger conflict of interest provisions related to the Pharmacy & Therapeutics committee (P&T committee) in the development of formulary and other utilization management tools.

We acknowledge the challenge that some closed health care systems may have with respect to the fact that its employees also are members of the care team and P&T committees. But that scenario certainly does not apply in all situations in the private health insurance market. And even for those closed systems, we believe that it remains important to identify and mitigate conflicts of interest wherever possible. We believe that the inclusion of stronger conflict of interest provisions will help to protect consumers' interest.

Thank you for considering our comments, which we hope will be incorporated into the Model Act before it moves forward to the Executive Committee for adoption. We stand ready to work with you to strengthen the Model Act. If you have any questions, please contact Anna Howard (anna.howard@cancer.org).

# Sincerely,

### **NATIONAL ORGANIZATIONS**

American Academy of Dermatology Association
American Academy of Family Physicians
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology-Head and Neck Surgery

American Academy of Child and Adolescent Psychiatry

American Cancer Society Cancer Action Network

American College of Radiology

American College of Rheumatology

American Lung Association

American Medical Association

American Society for Dermatologic Surgery Association

American Society for Reproductive Medicine

American Society of Clinical Oncology

American Urological Association

Disability Rights Education and Defense Fund

National Alliance of State & Territorial AIDS Directors

National Alliance on Mental Illness

National Center for Transgender Equality

National Hispanic Medical Association

Out2Enroll

The AIDS Institute

**US PIRG** 

### STATE ORGANIZATIONS

**Arkansas Medical Society** 

California Medical Association

California Rheumatology Alliance

Chicago Medical Society

Colorado Consumer Health Initiative

Colorado Medical Society

Community Service Society of New York

**Connecticut State Medical Society** 

Hawaii Medical Association

Idaho Medical Association

Idaho Medical Association

Illinois State Medical Society

**Indiana State Medical Association** 

Iowa Medical Society

Kentuckiana Rheumatology Alliance

**Kentucky Medical Association** 

Maine Medical Association

Massachusetts Medical Society

MedChi, The Maryland State Medical Society

Medical Association of Georgia

Medical Association of the State of Alabama

Medical Society of Delaware

Medical Society of New Jersey

Medical Society of the District of Columbia

Medical Society of the State of New York

MidWest Rheumatology Association

Minnesota Medical Association

Mississippi Arthritis and Rheumatism Society

Missouri State Medical Association

Montana Medical Association

Nebraska Medical Association

Nevada State Medical Association

New Jersey Citizen Action

**New Mexico Medical Society** 

New York State Rheumatology Society

North Carolina Rheumatology Association

North Dakota Medical Association

**Ohio State Medical Association** 

Oregon Medical Association

Pennsylvania Medical Society

Rheumatology Alliance of Louisiana

Rheumatology Association of Iowa

Rheumatology Association of Nevada

South Dakota State Medical Association

**Tennessee Medical Association** 

**Vermont Medical Society** 

Voices for Utah Children

Wisconsin Rheumatology Association

# **NAIC CONSUMER REPRESENTATIVES**

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