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October 8, 2021

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul,

You will soon have the opportunity to consider whether to sign or veto S3762 and S3566. On behalf of the 89,098 New York State members and supporters of the Council for Citizens Against Government Waste (CCAGW), I ask that you veto these bills.

The bills would seriously harm the ability of pharmacy benefit managers (PBMs) to use a variety of tools and policies that help lower drug costs. They would interfere with privately negotiated contracts among PBMs and the sponsors they serve that provide health insurance to their employees or members. If signed into law, the bills would increase prescription drug costs by \$2.2 billion in one year, and \$28 billion of the next ten years. Former Governor Cuomo vetoed similar legislation regulating PBMs in 2019 over concerns drug costs would rise, administrative burdens would increase, anti-competitive behavior would be encouraged, and problems would be created with the federal government over Medicaid and Medicare costs.

PBMs are hired by insurance companies, self-insured businesses, small businesses, unions, state governments, associations, and other entities to manage prescription drug benefits. The legislation would restrict PBMs' ability to drive down costs, which they accomplish by creating networks and formularies. These actions help to lower costs by increasing volume, improve patient adherence, and reducing dispensing errors. But S3762 would constrain the ability of PBMs to manage their networks. For example, there is a provision that prevents PBMs from requiring their network pharmacies meet their certification conditions, such as performing at a higher standard than the federal or state governments require for licensure. This essentially adopts an "any willing pharmacy" option that negates the purpose of the network, allows any state pharmacy to participate, which reduces the ability to drive discounts that will increase costs, and could put patients at risk.

S3762 also prevents a PBM from substituting an expensive pharmaceutical with a clinically interchangeable drug available at a lower price. This negates any step therapy program that has been previously agreed to that helps keep prescription costs down for their sponsors and their employees or members.

CCAGW believes a patient should know what they will pay for their drug at the pharmacy counter, but S3762 also implements transparency requirements that will disclose sensitive contractual negotiations among PBMs, pharmaceutical manufacturers, and pharmacies that would reveal proprietary information. A July 2, 2015 Federal Trade Commission report,

“Price Transparency or TMI?”, discusses the problems with transparency regulations. The authors write that while transparency can help consumers know exactly what they will pay for healthcare, “transparency is not universally good. When it goes too far, it can actually harm competition and consumers. Some types of information are not particularly useful to consumers, but are of great interest to competitors. We are especially concerned when information disclosures allow competitors to figure out what their rivals are charging, which dampens each competitor’s incentive to offer a low price, or increases the likelihood that they can coordinate on higher prices.” This is akin to forcing department stores to reveal the prices they negotiate with their suppliers. That action would help the competition, not the customer, and drive up prices.

S3566 is essentially a price control and would force all PBMs to provide the same reimbursement to all pharmacies in the network, including mail-service pharmacies. Mail-service pharmacies provide convenience, increase adherence to medications, cost savings by providing generic drugs that are interchangeable with the brand name, and fewer medication errors because of robotic dispensing and cutting-edge workflows. Therefore mail-service saves money for the patient and the sponsor of the drug benefit program. Negating this option will drive up costs for everyone.

The two bills that you will consider will raise rather than lower drug costs in the state of New York. PBMs play vital roles in managing pharmaceutical benefits, which can be complex and costly. The legislation supports one special interest, independent pharmacies, while ignoring those of businesses, unions, and others that depend on PBMs to drive down drug costs and help their employees and members get access to vital pharmaceuticals that keep them well. Again, I ask that you veto S3762 and S3566.

Sincerely,

A handwritten signature in black ink that reads "Thomas Schatz". The signature is written in a cursive, slightly slanted style.