



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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April 30, 2020

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
Attn: Docket 4255-2020
1351 West North St., Suite 101
Dover, DE 19904

Re: Department of Insurance Registration of Pharmacy Benefit Managers Reg. [23 DE Reg. 834 (April 1, 2020)]

Dear Ms. Ledogar:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Insurance proposal of new regulation 1411 to implement the registration requirements of House Bill No. 194 with House Amendment 1 in reference to Pharmacy Benefit Managers (PBMs). House Bill 194 requires the following:

- Requires PBMs to register with the Insurance Commissioner;
- Permits the Insurance Commissioner to issue cease and desist orders to PBMs who commit fraudulent acts or violations of Title 18, Chapter 33A;
- Requires PBMs to maintain certain records;
- Permits the Insurance Commissioner to examine the affairs of PBMs;
- Grants the Insurance Commissioner the authority to enforce Chapter 33A of Title 18 by imposing fines, requiring PBMs to take affirmative actions, and suspending, denying, or revoking a PBM's registration; and
- Updates existing law regarding maximum allowable cost lists and establishes a more transparent appeals process on which a pharmacy may rely if a PBM does not reimburse the pharmacy the amount owed under their contract or pursuant to the maximum allowable cost list.

Council supports the legislative and regulatory efforts to promote transparency in drug pricing and in the drug distribution system. However, increased transparency and registration requirements are not enough. While Regulation 1411 includes strict licensing requirements and provides important oversight of PBMs that will help provide insight and information on how PBMs conduct business, Council would suggest stronger legislation to keep PBMs accountable and promote savings as they were initially intended to do. As an example of an even more aggressive effort to control PBMs, Nevada passed legislation specifying that PBMs have a fiduciary duty to a third party with which it has entered into a contract to manage that party's pharmacy benefits plan. This means that the PBM must act in the best interest of the pharmacies or consumers it serves. Council asks that the Insurance Commissioner and Delaware legislators consider a similar option to protect the citizens of Delaware.

Thank you for your consideration of our comments. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc