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The Honorable Joseph J. Solomon Jr., Chairman of the
House Corporations Committee
State House
Providence, RI 02903

RE: AHIP Comments on H-7139, An Act Relating to Insurance – Control of High Prescription Costs – Regulation of Pharmacy Benefit Managers

To Chairman Solomon and Members of the House Corporations Committee,

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on H-7139, legislation that makes sweeping changes to pharmacy benefit managers' (PBMs) operational practices, including, among other things, drug pricing restrictions, reimbursement limitations, transparency requirements, and utilization management prohibitions.

Everyone should be able to get the medications they need at a price they can afford. AHIP and our members share this commitment with you. However, we oppose H-7139 as a means of achieving these aims. Additionally, we are concerned that the bill may jeopardize the protection that Rhode Island employers rely upon under the Employment Retirement Income Security Act of 1974 (ERISA) and its preemption provision, which affords employers consistency and uniformity of health plan administration.

PBMs play an important role in negotiating lower costs for hardworking Americans, and the savings achieved are passed on through lower premiums and lower out of pocket costs that health insurance providers offer to members.

High drug prices have created an affordability crisis for Americans.

Rising costs associated with prescription drugs represent the largest segment of health care spending, accounting for 22.2% of commercial premiums¹ and 12% of all Medicare costs from Part D alone,² with Medicare prescription drug spending increasing by 3% over the previous year.³ It is through the concerted efforts of health insurance providers, their PBMs, and other partners – e.g., to harness competition where it exists – that these costs are not even higher.

It is clear drug prices are out of control, and the problem is the price that Big Pharma, and Big Pharma alone, controls. While drug manufacturers can choose to lower those prices for every American, they

¹ <https://www.ahip.org/resources/where-does-your-health-care-dollar-go>. September 6, 2022.

² Report to the Congress: Medicare Payment Policy. MedPAC. March 2021. Available at https://www.medpac.gov/wpcontent/uploads/2021/10/mar21_medpac_report_ch13_sec.pdf.

³ National Health Expenditures 2020 Highlights. Centers for Medicare & Medicaid Services. Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-andReports/NationalHealthExpendData/NHE-Fact-Sheet>.

instead continue to raise prices year after year – even several times a year – which makes health care less affordable and accessible for everyone.

PBMs ensure affordable and accessible medications for patients.

Health insurance providers are on the side of patients, negotiating lower prices to ensure access to the lifesaving medications they need. Many health insurance providers choose to contract with PBMs to add insight and leverage to their ability to negotiate with drug manufacturers who often hold monopoly power over these vital medicines and have little to no incentive to negotiate otherwise.

Through PBMs, health insurance providers gain specialized expertise on prescription drug pricing and clinical issues that they do not have themselves. They use PBM technology-based tools and programs to drive value, efficiency, and effectiveness that ensure patient access; as well as operational assistance in administering prescription drug benefits as efficiently and effectively as possible. Specific services that health insurance providers and other payer customers (such as private employers, state and municipal governments, and state Medicaid agencies) receive from PBMs in whole or in part include:

- Prescription drug claims adjudication and processing through the plan’s drug benefit.
- Negotiation of pharmacy payments and manufacturer discounts, including through value-based arrangements that tie payments and discounts to clinical quality outcomes.
- Assistance with the development of formulary designs, including consultation with their own pharmacy and therapeutics (P&T) committee or in collaboration with those of their client health plans, to help enrollees obtain safe and effective medications at the best value.
- Development of pharmacy networks that drive value to patients and plan sponsors by incorporating clinical performance standards and metrics, while also negotiating contracts directly with pharmacies (including retail, specialty, and mail-order pharmacies).
- Design and implementation of consumer-driven and data-supported medication management and other innovative pharmacy programs to prevent medication errors, increase adherence, and incentivize the use of the high-value and clinically appropriate therapeutic options.
- Enrollee education services around the drug benefit and prescription drugs generally, including the availability of safe, effective, and potentially more affordable generic and/or biosimilar drugs where applicable.

The many assertions about PBMs in H-7139 are thinly veiled efforts by others in the supply chain to distract from their roles in increased health care costs and extract higher reimbursement and more revenue for themselves. While the Federal Trade Commission has repeatedly noted the pro-competitive practices of PBMs in the drug space,⁴ drug manufacturers continue to hold up PBMs as a distraction. By attempting to limit PBMs’ negotiating ability, manufacturers and others in the drug distribution supply chain – including wholesalers, pharmacies, hospitals,⁵ and physicians who use “buy and bill” approaches for physician-administered drugs – would have fewer checks against these abuses and far more leverage in negotiations with payers, ultimately raising costs for patients.

⁴ https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-erisa-advisory-council-u.s.department-labor-regarding-pharmacy-benefit-manager-compensation-fee-disclosure/140819erisaadvisory.pdf

⁵ Xiao R, Ross JS, Gross CP, et al. Hospital-Administered Cancer Therapy Prices for Patients With Private Health Insurance. *JAMA Intern Med.* April 18, 2022. Available at https://jamanetwork.com/journals/jama/fullarticle/10.1001/jamainternmed.2022.1022?utm_campaign=articlePDF%26utm_medium=articlePDFlink%26utm_source=articlePDF%26utm_content=jamainternmed.2022.1022.

Rhode Island should not give a free pass to drug manufacturers and others looking to scapegoat PBMs. Instead, the Legislature should examine the entire drug distribution supply chain, including drug manufacturers, to better understand why drug prices are out of control.

Extending H-7139's PBM restrictions to ERISA plans would further increase costs for Rhode Island businesses and consumers.

Today, more than half Americans receive their health insurance through employer coverage that is governed under ERISA, which affords employers consistency and uniformity of health plan administration, encouraging health care coverage that improves the health and financial stability of employees and their families.

AHIP and its members are concerned that the *Rutledge v. PCMA* Supreme Court decision is used as justification for H-7139, which suggests a legislative intent for the bill to apply to ERISA plans. Following the Supreme Court decision, pharmacists are aggressively advancing legislation in states across the country that would jeopardize this consistency and uniformity of ERISA employer coverage. However, the *Rutledge* decision was narrow and fact specific and does not authorize expansive state authority to restrict the types of tools employers can use to ensure access to affordable health care.

Health insurance should be simple, effective, and affordable. Patients and employers should not have to jump through hoops or navigate complex regulations to get the care they need at a cost they can afford. A 50-state patchwork of complicated and inconsistent mandates for employer-provided coverage will cause more confusion and more expensive coverage.

For these reasons, AHIP supports a single, cost-saving national standard regulation of employer-provided coverage ensuring more affordable coverage for all that is easier to understand, and thus oppose H-7139's inclusion of ERISA plans in its scope. Rhode Islanders deserve easy-to-understand information about health care coverage.

We urge the Committee not to pass H-7139 for these reasons. As Rhode Island works towards making drugs more affordable, it is critically important to remember the process begins with, and is therefore driven by, the list price – which is set only by the drug manufacturer.

Thank you for your consideration of our comments. AHIP and its members stand ready for further discussions on this important topic.

Sincerely,
America's Health Insurance Plans



By: _____
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AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.