## South Carolina Pharmacy Benefit Manager Licensure & Regulation Act

### S. 359  H._____

### *"Talking Points"*

**What this bill does:**

**1.)** <u>Requires</u> Pharmacy Benefit Mangers (PBMs) who provide prescription drug claims processing to register with the South Carolina Department of Insurance for the purpose of protecting the public health, safety, and welfare.

**2.) *Rationale:***

    a.  In 2016, South Carolinians spent $4,315,900,000 on prescription drugs;

    b.  South Carolinians come trough retail pharmacies doors more than **60 million** times a year;

    c.  The Big Three (3) PBMs (Caremark, Express Scripts and OptumRx) accounted for as much as 89% of those claims running through their processing systems and over 238 million covered lives;

    d.  PBM business practices *are not* licensed and hardly regulated by this state;

    e.  PBMs have come under greater scrutiny by other states and here in South Carolina for excessive spreads on generic drugs (as much as 33%); paying their wholly-owned, out-of-state, subsidiary pharmacies more than independent pharmacies domiciled in this state along with other bad business contract practices;

        i.  Placing 'Gag' orders in network pharmacy contracts prohibiting them from informing consumers that the cash price of the drug is less than their co-pay;

        ii.  Prohibiting a network pharmacy from contacting the plan sponsor when they detect large 'spreads' on prescription drugs for their patients;

        iii.  Sending misleading letters to competing network pharmacy's patients trying to convince them they can only use mail order or a certain pharmacy.

    *f.*  PBM's mandating the use of their out-of-state mail order pharmacies or misleading consumers about their pharmacy options, syphons off as much as $1.03 billion (24% of prescription dollar value) in annual prescription drug sales here in South Carolina having a **devastating impact** on pharmacy jobs and annual town/city/county business **registration fees** which are based on "**total sales."**

**3.) Consumer Protections:**

    a.  <u>Protects</u> <u>consumers</u> from paying higher drug prices or co-pays on their medications at the pharmacy counter by prohibiting PBMs from charging the

consumer more for the drug then what they reimburse the pharmacy or the pharmacy's cash price, whichever is lower;

  i. U.S. HHS estimated in their recent rule making change as it relates to including all pharmacy price concessions at point of service; (transparency) would save prescription drug beneficiaries between $7.1 and $9.2 billion over the next ten (10) years;

 b. _Protects_ _consumers_ from receiving PBM generated advertisements, promotions, solicitations, representations or proposals that are _untrue, deceptive, or misleading;_

  i. PBM communications have often led consumers to believe that they could only use the PBM's mail order pharmacy or a certain chain pharmacy. They use this tactic to get around mandatory mail prohibition laws;

  ii. PBMs have full access to their competitor's patient base for those plans the PBM is hired to provide claims processing services. They have the data to contact those patients without the plans knowing;

  iii. PBMs have in past sent letters telling patients that had to use the PBMs mail order service or stop getting their medications even when the state law specifically prohibited the practice for certain disease states;

**What this Bill Doesn't Do:**

1.) It _DOES_ _NOT_ expose any specific PBM proprietary or business data. In fact, it strictly prohibits the Director from releasing any specific data includes protection from SC FOIA requests.

2.) It _DOES_ _NOT_ prohibit a PBM from using an _optional_ mail order service for consumers in their network plan;

**3.)** It _DOES_ _NOT_ increase prescription drug costs for insurers. This legislation seeks prescription **drug cost transparency**. It is this very transparency that will lead to lower prescription drug costs, not higher. According to the U.S. Health and Human Services, **_"it will significantly reduce out of pocket costs to consumers by as much as $9.2 billion over ten years."_**