2018-2019 JOINT PUBLIC AFFAIRS & COMMUNITY PHARMACY BUSINESS COALITION COMMITTEE REPORT

June 12, 2019

Submitted by: Jeff Lindoo and Tony Post
Board Liaison: Michelle Aytay

SECTION I: 2018-2019 CHARGES:

- Monitor regulatory activities to identify issues likely to come before the Legislature including but not limited to:
    - Revision of Medicaid reimbursement structure as mandated by CMS Outpatient Covered Drug Rule
    - Opioid Risk Mitigation
- Review bills introduced and provide guidance to staff consistent with MPhA policies.
- Make recommendations to the Board of Directors on issues for which policy positions have not yet been developed, or for modifications to existing policy positions.
- Provide input into the development of strategies and grassroots initiatives to advance legislative and regulatory initiatives identified as association priorities.
- Participate in the coordination of efforts to modernize the Minnesota Pharmacy Practice Act to ensure pharmacists are able to practice to the top of their license and participate fully in new total cost of care models, advanced payment models, including accountable care organizations.
- Continue active involvement in Minnesota Pharmacy Alliance initiatives.
- Review of proposed Board Policies pertaining to Public Affairs.
- Provide guidance to the Educational and Events Advisory Committee on topics to be included in MPhA educational conferences.
- Review recommendations from the Policy Manual Review Committee for updating and proposing new MPhA policies.
- Provide recommendation on creation of candidate endorsement policy.
- Determine MPhA's process for input to the Board of Pharmacy's planned rules revision.

SECTION II: DELIVERABLES/TIMELINE:

- Reports to MPhA Board – Monthly During Session
- Reports to Membership – Weekly Briefings During Session
- Final Report to House of Delegates – June 12, 2019
- Committee co-chairs, please report to the incoming President in May as to whether you are willing to continue serving as co-chair and/or suggestions for co-chairs from your committee for the following year.

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SECTION III: REPORT OF COMMITTEE ACTION AND PROGRESS ON DELIVERABLES
The Public Affairs Committee accomplished the following on deliverables for the 2018-2019 reporting period:

- Members of the committee monitored legislative and Board activity continuously through the legislative session and met monthly to report on and discuss action on legislation and Board activity.
- Members of the committee participated in the regular meetings of the Minnesota Pharmacy Alliance (the Alliance).
- Reports were provided to the MPhA Board of Directors during the legislative session through our committee liaisons and in conversations with the Interim Executive Director and Board members active with the Alliance.
- Reports were provided to the MPhA membership during the legislative session in Small Doses and other Action Alerts.
- Two proposed Association policies were developed in response to legislative activity and are presented below.
- Public Affairs will continue to monitor the Board of Pharmacy's progress on the rules revision process. At least two task forces will be formed to work with the Board and MPhA will seek membership on those task forces. We will also recruit members to attend and participate in the public meetings of those task forces.
- This is the committee's Final Report to House of Delegates.

SECTION IV: ISSUES ADDRESSED BY THE COMMITTEE OUTSIDE OF STATED CHARGES

MAIN LEGISLATIVE INITIATIVES

- **PBM Licensure and Regulation**
  This issue was a priority for the session for both MPhA and the Minnesota Pharmacy Alliance (the Alliance). At the beginning of the session, MPhA was approached by the Senate HHS Committee Chair and her Committee Administrator with a proposal for PBM licensure and regulation. MPhA worked to influence the language in that legislation as much as possible and then worked to get companion legislation introduced and moving in the house. After one of the most extensive and exhaustive lobbying efforts in MPhA history, SF 278 was passed and signed by the Governor. Key features of the legislation are:
    - All PBMs must be licensed to operate in Minnesota.
    - The statutes are listed under the Department of Commerce, who also regulates insurance.

- Commissioner of Commerce has authority to create rules around the statutes and enforcement authority.
- Specialty drugs and specialty pharmacy are defined in the statute.
- A PBM must exercise good faith and fair dealing in the performance of its contractual duties and must inform the plan sponsor of any conflicts of interest.
- PBMs must meet prescribed pharmacy access standards.
- Transparency reports on aggregate and claims level data are required to plan sponsors and the Commissioner of Commerce.
- A PBM cannot require or offer incentives to patients to use a PBM-owned pharmacy unless they offer the same terms and conditions to other pharmacies to participate in the same incentives.
- The language on pharmacy audits and MAC pricing in the pharmacy statutes is transferred to the Department of Commerce statutes.
- PBMs must remove claims processing barriers to synchronizing patients' medications.
- Gag clauses for pharmacists in PBM contracts are prohibited.
- A PBM may not charge a patient a co-pay greater than the lesser of: The patient's usual co-pay; The pharmacy's cash price; The claim price.
- Retroactive claim adjustments are prohibited.

- **Change in Methodology for Pharmacy Medicaid Reimbursement**

  In February, 2016, CMS enacted the Covered Outpatient Drug Rule that required states to change the methodology for reimbursing pharmacies for fee-for-service Medicaid prescriptions. States are given latitude in the methodology, but must be able to demonstrate that product cost reimbursement is actual acquisition cost and the professional dispensing fee represents the true cost of dispensing. States were required to come into compliance with the rule by April 1, 2017. Minnesota is one of only two states not yet in compliance with this rule and CMS recently informed DHS that we risked losing $190 million in federal matching funds if we don't come into compliance this year. We have an additional issue, in that the change to actual acquisition cost means that Medicaid MUST reimburse the 2% wholesale tax that has not been reimbursed in the past, in order for pharmacies to remain whole.

  MPhA has been working with DHS since 2016 to present the legislature with a proposal to come into compliance with the rule, but the legislature has declined consideration of the rule. Last session, in the very last days of the session, the proposed changes were inserted into the HHS omnibus bill that was sent to the Governor. This is the bill that was vetoed by the Governor. This session has also been a struggle to keep the change in the legislature's plan, especially with the uncertainty over whether the legislature would allow the sunset of the Minnesota Care Tax. In the interim between the end of session and the special session called

to approve all budget bills, reimbursement of NADAC, plus a professional dispensing fee of $10.48 (a compromise from our original agreement with DHS) plus 1.8% reimbursement for the wholesale tax (the tax goes to 1.8% January 1, 2019) was included in the final HHS omnibus bill passed by the legislature and signed by the Governor. This change represents a significant increase in reimbursement for pharmacies over the current rate.

- **Medication Administration Authority for Pharmacists**
  This issue was also a priority for MPhA and the Alliance. We sought unlimited authority for pharmacists to administer medications but were unable to advance legislation this session. Language authorizing pharmacists to administer IM and Sub-Q injections for the treatment of alcohol and opioid dependence and IM and Sub-Q injections for treatment of mental health conditions was included in opioid stewardship legislation. Exercising this authority requires either an order from the prescriber or a collaborative practice agreement. We will be back at the legislature next year to work on our goal of complete medication administration authority.

- **Prescribing Authority for Pharmacists**
  During the last three sessions, MPhA and the Alliance have advocated for authority for pharmacists to prescribe one or more categories of medications that do not require diagnosis, including naloxone, self-administered hormonal contraceptives, tobacco-cessation products and travel medications. During the 2018-2019 session, we advocated for authority for naloxone, tobacco cessation and hormonal contraceptives. As you can imagine, this effort was strongly opposed by the Minnesota Medical Association. Their opposition and all of the legislative activity around PBM licensure and opioid steward served to "suck all the oxygen" out of this effort. Bills were introduced in the House and Senate, but no hearings were granted. These bills will remain active next session and will remain a top priority for MPhA and the Alliance next year.

- **Opioid Stewardship**
  Opioid stewardship was not a proactive agenda issue for MPhA, but it did consume a considerable amount of time and resources, working to prevent potential negative consequences for pharmacies and the patients we serve. Our two greatest concerns were: 1) Taxes or fees on manufacturers and wholesalers might be passed on only to Minnesota pharmacies. Since PBM reimbursement schedules are usually regionally or nationally based, it would be unlikely that these Minnesota-only higher costs would be reimbursed. 2) Taxes or fees might be high enough that some generic opioid manufacturers might find their best business decision in response to the higher costs to be exiting the Minnesota market, resulting in significant drug

shortages. The bill was passed, but we will have to wait and see whether or to what extent either of the above play out. The bill also contained several other sections that impact pharmacy practice:

- As mentioned above, it includes authorization for pharmacists to provide IM and Sub-Q injections for the treatment of alcohol and opioid dependence and for the treatment of mental health conditions.
- It creates new limitations on the quantity of opioids that can be prescribed for several acute pain conditions.
- It prohibits the initial filling of a Schedule II-IV opioid prescription more than 30 days beyond the date it was written. It also prohibits the refilling of a Schedule III-IV opioid prescription more than 30 days beyond the last date of fill.
- The bill also expands the situations in which a pharmacy must check the ID of a "purchaser" of a controlled substance prescription. The requirement is now to check ID for all controlled substance prescriptions, Schedule II-V, whether cash or third party, unless the patient is known to the dispenser.

SECTION V: JOINT POLICY COMMITTEE POLICY RECOMMENDATIONS TO THE HOUSE OF DELEGATES

The Public Affairs Committee respectfully submits the following proposals for consideration by the MPhA House of Delegates at the June 12, 2019 session of the House of Delegates:

- **MPhA POSITION ON SUNSET OF PROVIDER TAX AND 2% WHOLESALE TAX**

  Background: The original legislation creating the Minnesota 2% provider tax and 2% wholesale tax scheduled those taxes to sunset December 31, 2019. Knowing that the tax was likely to be a contentious issue in the legislature and whether or not the tax actually did sunset would have impact on the discussion around the change in reimbursement methodology for Medicaid pharmacy reimbursement that was mandated by the CMS Covered Outpatient Drug Rule, it was believed that MPhA should have a position on the sunset of the tax. The following statement was developed by the Public Affairs Committee. It was approved by the MPhA Board for interim use during the session.

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Resolution 19-002
Category: Reimbursement and Compensation/Third-Party Programs
Title: Minnesota Care/Provider and Wholesaler Tax

MPhA supports the sunset of the Minnesota Care and 2% Provider and Wholesale Distributor as long as viable, favorable alternative methods of funding the current programs are found that do not negatively impact pharmacists' ability to provide patient care.

- **MPhA Policy on Opioid Stewardship**

Background: The development of opioid stewardship legislation was hotly debated during the 2017-2018 legislative session. Since no legislation was passed, it was clear the issue would be active again during the 2018-2019 session. It was also clear that legislation could have negative impact on pharmacies and potentially on the supply of opioid medications. It was believed that MPhA should have a statement on our concerns about possible negative impact from legislation and actions we support in fighting opioid abuse. The statement below was approved by the MPhA Board for interim use during the 2018-2019 legislative session.

Resolution 19-003
Category: Patient Safety/Controlled Substances
Title: Opioid Stewardship

MPhA supports efforts to address the opioid crisis in Minnesota which includes education and tools to combat misuse and abuse. Today, pharmacists choose to be part of the solution by voluntarily accepting prescription drug take-back, educating consumers and prescribers, supporting Naloxone distribution and leveraging information systems to produce better data, among other initiatives.

The pharmacy community is deeply concerned about the impact of any opioid tax which may result in lack of medication access and/or increased costs for patients and detrimental economic impact on pharmacies. If the tax is passed down, the reality is for most pharmacy transactions, there is little or no way to have existing private contracts or government programs increase reimbursement to cover the cost of the tax.

While open to other solutions, MPhA supports:

- ***Education efforts by Minnesota DARE and others to prevent drug misuse and abuse***
- ***Funding of increased drug disposal and voluntary take-back programs***

- ***Funding for broader distribution of Naloxone***
- ***Providing education and incentives for prescribers and pharmacies to follow Minnesota's e-prescription mandate***