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US Pain Foundation

December 3, 2019

Massachusetts House Committee on Ways and Means
24 Beacon Street, Room 243
Boston, MA 02133

Re: Support Increasing Transparency in the Drug Supply Chain – SB 2409

Dear Chair Michlewitz, Vice-Chair Garlick, and House Committee on Ways and Means Members:

The Alliance for Transparent and Affordable Prescriptions (ATAP) is a coalition of patient and provider organizations functioning at both the state and federal level to address pharmacy benefit managers (PBMs) and their impact on prescription drug costs and patient access to affordable treatment.

Since its inception, ATAP has been working to eliminate the unfair and deceptive practices of PBMs. With this in mind, we urge you to support Senate Bill 2409 in Committee for the following reasons.

ATAP supports implementing policies that require manufacturers, PBMs, and other relevant stakeholders to disclose to the appropriate government entities information regarding all price concessions made throughout the system, including the total amount received by a PBM from a manufacturer, the percentage of that amount designated rebate or discount and the amount getting passed through to plan sponsors and consumers.

To that end, ATAP supports provisions in the bill on PBM and manufacturer reporting on price reduction trends, which includes: amount of rebates and discounts PBMs receive from manufacturers; price reductions provided by a PBM to a contracted health plan in connection with the utilization of the drugs offered through the PBM, and price reductions provided by the PBM that resulted in a reduction in cost for patients.

Additionally, we support language in SB 2409 requiring PBMs to report: the *administrative fees* and payments that PBMs receive and retain from health plan clients; the aggregate amount of all retained rebates that PBMs receive from manufacturers that do not pass through to the PBMs' health plan clients; and the percentage of contracts that the PBM has in which they *retain all of the rebates and discounts* they receive from the manufacturer. The rebate system was intended to generate cost-savings, but lack of transparency laws

ALLIANCE FOR TRANSPARENT & AFFORDABLE PRESCRIPTIONS

1100 E Woodfield Road, Suite 350 | Schaumburg, IL 60173

(847) 517-7225 | www.atapadvocates.com | [@ATAPAdvocates](https://twitter.com/ATAPAdvocates)

have enabled PBMs to divert rebates and discounts toward their bottom line – rather than defraying costs for plans and patients. *Therefore, ATAP recommends that the legislature also establish a minimum percentage for rebates that PBMs must pass on to health plans, taking in to account fee reclassification abuses.*

ATAP holds that unless more regulation and oversight is imposed on PBMs, they will continue to engage in conduct that is deceptive, unfair, and contrary to the best interest of patients. **Provisions set forth in SB 2409 require PBMs to obtain a license to conduct business in the state and allows the Division of Insurance to regulate PBMs' activities to ensure PBMs comply with the terms required for maintaining licensure. As such, ATAP strongly urges the adoption and implementation of a PBM licensure policy.**

In addition, we support language in the bill which would implement a process to access PBM and insurer mergers and consolidations to further explore the impact those arrangements have on prescription drug costs; and, the creation of a Task Force to assess the prevalence of PBMs requiring or using financial incentives or penalties to incentivize customers to use a pharmacy with whom the PBM has an ownership or financial interest.

Similarly, in order to reduce costs for patients, ATAP believes that drug cost-sharing obligations for patients should be based off the net price which takes into account rebates and discounts rather than list price. Policy to institute this would require shifting the application of manufacturer rebates passed onto health plans from aggregate benefit costs to the price of an individual drug at the point of sale.

As a patient and provider organization, ATAP welcomes the opportunity to provide further input on how to mitigate the cost of drugs to improve patient access to treatments before the Commission during the stakeholder engagement process outlined in SB 2409.

ATAP holds that increased transparency and appropriate oversight on how manufacturers, PBMs, and insurers determine the price and cost of drugs is necessary in order to improve the drug supply chain. For the aforementioned reasons, ATAP implores you to support Senate Bill 2409.

Should you have any questions, please direct them to Heather.Kazmark@naylor.com. Thank you in advance for your time and consideration of our requests.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', is placed over a light gray rectangular background.

Robert Levin, MD
President