January 7, 2026

James Brown
Commissioner of Securities & Insurance
Office of the Montana State Auditor
840 Helena Ave.
Helena, MT 59601
EMAIL: CSIPublicComment@mt.gov

SENT VIA EMAIL

Re: MT CSI Solicitation for Public Comments for HB 740 Potential Rulemaking

Dear Commissioner Brown:

We are writing on behalf of Pharmaceutical Care Management Association ("PCMA") in response to the Montana Commissioner of Securities & Insurance's ("CSI") solicitation for public comments regarding potential House Bill ("HB") 740 rulemaking, as published by the CSI on November 11, 2025.

For background, PCMA is the national trade association representing pharmacy benefit managers ("PBMs"). PCMA's PBM member companies administer drug benefits for more than 289 million Americans, including most Montanans, who have health insurance through employer-sponsored health plans, commercial health plans, union plans, Medicare Part D plans, managed Medicaid plans, the state employee health plan, and others. PBMs use a variety of benefit management tools to help these plans provide high quality, cost-effective prescription drug coverage to plan beneficiaries.

Below are comments from PCMA, including answers to CSI's questions, as well as some issues on any potential HB 740 rulemaking in the future.

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QUESTION #1

Does the definition of independent pharmacy outlined in HB 740 require additional regulatory clarification? Does the definition create the unintended inclusion of other pharmacy business models outside of similar independent or community pharmacies? Does the current definition for pharmacy benefit managers require further clarification? If so, what considerations should be made for clarity in administrative rules?

During the legislative process and public debate surrounding HB 740, committee testimony indicated that the definition of "independent pharmacy" was not intended to encompass hospital pharmacies, clinics, home-delivery, franchises, dispensing physicians or nursing care centers. However, these entities were not **expressly**

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excluded. PCMA and its member companies respectfully request that the CSI consider clarifying these exceptions in any potential rulemaking.

QUESTION #2

How should "third-party payer" be further clarified in administrative rule, especially regarding self-insured employer arrangements, discount plans, and non-traditional payers?

This question suggests that any potential CSI rulemaking could apply to self-insured employer arrangements. However, CSI rulemaking that attempts to regulate self-insured employers that are organized under the federal Employee Retirement Income Security Act ("ERISA") of 1974, are likely preempted. For further context, *see* 29 U.S.C. § 1144(a) (providing that state laws that "relate to" employee benefit plans are superseded by the terms of federal ERISA law).

Moreover, any potential CSI rulemaking on HB 740 that is related to employer arrangements could exceed CSI's statutory authority related to multiple employer welfare arrangements ("MEWAs"). Neither the Pharmacy Audit Integrity Act in Title 33, Chapter ("Ch.") 2, part 20, nor other pharmaceutical-related statutes in Ch. 22 (§§ 33-22-170 through -177, MT Code Annotated ("MCA")) apply to MEWAs. *See generally* § 33-35-306, MCA; *but see* § 33-35-306(1)(d), MCA (applying PBM Oversight statutes in Title 33, chapter 2, part 24 to MEWAs).

QUESTION #3

Are there specific, objective criteria or documentation that could be required to verify a pharmacy's status as "independent" under HB 740, e.g. attestation forms, accreditation records, ownership documentation, affiliation disclosures? Would periodic re-certification be helpful to ensure continued compliance?

Independent pharmacies should be required to self-identify with the Montana Board of Pharmacy based on the statutory definition of 'independent pharmacy,' including any exceptions as **expressly** clarified by CSI. Pharmacies that fraudulently claim independent status should be subject to penalties. This attestation should occur annually, and independent reimbursement should not be provided until the attestation is complete. CSI may reference the Board's website to confirm that any pharmacy submitting a complaint was verified as independent on the date of the claim. CSI should consider posting a listing of independent pharmacies on their website on a quarterly basis.

QUESTION #4

HB 740 mandates a minimum reimbursement floor for independent pharmacies. Is further clarity required in the form of administrative rule to define the methodology, calculation or process to update that floor? What source should the agency use when considering the Wholesale Acquisition Cost?

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The "national average drug acquisition cost" ("NADAC") is voluntarily submitted by pharmacies, and actual rates in various areas may be vastly different than what is reported. In 2024, the federal Centers for Medicare and Medicaid Services ("CMS") implemented a short-term measure to address rate volatilities by providing monthly NADAC updates for generic drugs (i.e., not brand names) and adopt a three-month average to moderate the volatility.
As for wholesale acquisition cost ("WAC"), it is not clear how pharmacies calculate this amount, and whether it includes taxes, shipping costs, or discounts relative to a certain drug. That said, the CSI should consider having WAC reference Medispan or First DataBank as the verifiable source of WAC.

QUESTION #7

What additional reporting requirements, if any, should PBMs, payers, or pharmacies have under the rules? Should the rules contemplate a required timeframe for advance notice of contract changes? How should any reporting requirement of the pharmacies or PBMs treat proprietary information that may be protected data?

HB 740 contains no provisions related to reporting, nor do §§ 33-22-170 to -177, MCA (provisions pertaining to pharmacy reimbursement and rights) or §§ 33-2-2001 to -2006 (Pharmacy Audit Integrity Act). PBMs have statutory reporting requirements, (*see* § 33-2-2407, MCA (transparency); § 33-2-2408, MCA (appeals); ARM 6.6.7903 (network adequacy)), but these obligations do not apply to payers or pharmacies. To the extent a rule adds reporting requirements not contemplated in HB 740 and related statutes, such a rule could be considered invalid because it is an additional requirement not envisioned by the legislature in enacting these laws. *See Gold Creek Cellular of Mont. Ltd. P'ship v. State,* 2013 MT 273, ¶ 12.

Second, regarding a notice timeframes for contract changes, this is entirely out-of-scope for the language of HB 740 and related statutes. Also, while HB 740 and its related statutes set forth rights of pharmacies that, if contradicted, would render a contract provision unlawful, (*see* HB 740, § 6), HB 740 does not address contract changes, let alone specific timeframes to provide notice for such changes. In addition, timeframes and other requirements related to contract changes are typically terms of a private contract, which can only be impaired by regulation if it is reasonable and necessary to serve an important public purpose. *Seven Up Pete Venture v. Montana*, 2005 MT 146, ¶ 40.

Third, regarding the treatment of "proprietary information," CSI must treat filed proprietary and confidential information per well-established Montana public records laws. Mont. Const. Art. § 9; § 2-6-1003, MCA; § 33- 1-312, MCA. Information submitted to a state agency that is designated confidential by law, like protected health information ("PHI"), is not considered public. Section 2-6-1002(11), MCA. Proprietary business information may not be protected unless it is prima facie established to be a trade secret. *See Great Falls Tribune v. Mont. Pub. Serv. Comm'n*, 2003 MT 359*,* ¶ 54. CSI has a process to apply for such protection.[1]

[1] Commissioner Downing. *Advisory Memorandum Regarding Requests for Trade Secret Protection On Rate and Form Filings*. April 14, 2022. Available here: http://csimt.gov/wp-content/uploads/2022/12/2022-04-14-Requests-for-Trade-Secret-Protection-on-Rate-and-Form-Filings.pdf).

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QUESTION #8

The bill adds provisions limiting the PBM's ability to add drugs to a Maximum Allowable Cost list if they are temporarily unavailable. What length of time should constitute temporary and what source of data should the agency use in enforcing the lists?

PCMA and its member companies respectfully request that pending any potential HB 740 rulemaking, CSI consider defining "temporarily unavailable" as shortage(s) based on American Society of Health-System Pharmacists (ASHP).

QUESTION #9

Are there existing arrangements with independent pharmacies that are jeopardized by any provisions of HB 740? Please indicate whether these arrangements could be addressed by rulemaking within the provisions of HB 740 or whether future legislative action is needed.

As most of the stakeholders involved in the legislative process and public debate over HB 740 are aware, the intent of the effective rate contracting ban was to apply to independent pharmacies only. In its current form, it also applies to chain pharmacies. PCMA and its member companies respectfully request that the CSI consider clarifying the effective rate contracting provision to only apply to independent pharmacies.

QUESTION #10

What role will pharmacies/beneficiaries have in filing complaints or initiating investigations under the rule?

This question needs clarification for a few reasons. First, as a threshold matter, it is not clear what "the rule" is. Second, if the question refers to complaints filed with CSI, pharmacies and beneficiaries can already file complaints for any reason. Third, it is not clear why, how, or under what authority pharmacies/beneficiaries would initiate an investigation.

PCMA and its member companies respectfully request that the CSI consider adopting a process similar to other states. See immediately below for an example.

- A complaint filed by a pharmacy or pharmacist alleging a violation of this law filed with CSI must use the "PBM Complaint Form" found on CSI's website. The complaint and all supporting documentation must be submitted to CSI electronically. The complaint form shall include the prescription number, date of service; and pharmacy National Council for Prescription Drug Programs ("NCPDP") number.
- Submitted with the complaint should be clear, legible copies of all documents that support the allegations in the complaint. These documents must include a copy of any contract or agreement between the Complainant and the Respondent.

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- Complaints that allege there has been an improper rejection of a request to fill a prescription should include documentation showing the reason for the rejection and evidence showing the request was, in fact, rejected.
- Complaints that allege a pharmacy or pharmacist was reimbursed an amount less than that called for by the Statute should include documentation of the reimbursement received.
- A pharmacy or pharmacist must also provide CSI with all other documents, information, statements, affidavits, and other evidence requested by CSI.
- Every complaint must include an email address at which CSI may communicate with the pharmacy or pharmacist filing the complaint.
- Complaints that do not comply with the requirements above may be rejected by CSI.
- A filing fee of One Hundred Dollars ($100.00) must be paid when filing a complaint that alleges violations of this law. Payment must be made electronically following instructions on CSI's website.
- An answer to a complaint filed by a pharmacy benefits manager must be accompanied by clear, legible copies of all documents that support any allegations, denials, and arguments made in the answer. A pharmacy benefits manager must also provide CSI with all other documents, information, statements, affidavits, and other evidence requested by CSI.

PCMA QUESTION FOR THE CSI

Finally, PCMA has a question for the CSI. Specifically, will the CSI consider publishing the annual dispensing fee increase amount or otherwise establishing the methodology for calculating the increased rate to ensure consistency across PBMs?

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PCMA appreciates the opportunity to comment on the CSI's solicitation on potential HB 740 rulemaking. We look forward to working with the CSI to answer any questions regarding our comments.

Please feel free to contact either myself or my colleague, Tonia Sorrell-Neal, PCMA's Senior Director of State Affairs (tsorrell-neal@pcmanet.org) with any questions or for further discussion. We look forward to any response.

Sincerely,

Peter Fjelstad

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