RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC
ATTORNEYS AT LAW

ALAN M. RIFKIN
SCOTT A. LIVINGSTON (MD, DC)
LAURENCE LEVITAN
EDGAR P. SILVERH
MICHAEL V. JOHANSEN
JOEL D. ROZNER (MD, DC)
RICHARD K. REED
NORMAN D. RIVERA
LANCE W. BILLINGSLEY
GERALDINE VALENTINO
JAMIE B. EISENBERG (MD, DC, NY)
LYDIA B. HOOVER
M. CELESTE BRUCE (MD, DC)
LEWIS S. GOODMANH
TIMOTHY K. HOGANH
MICHAEL S. NAGY (MD, VA)
JOHN J. LEIDIG
MELVIN A. STEINBERGH

H OF COUNSEL

225 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MARYLAND 21401
(410) 269-5066 • (877) 303-7557
FAX (410) 269-1235
E-MAIL: RLLS@RLLS.COM

HARBOR COURT • SUITE 200
575 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(410) 837-9700 • (800) 673-8565
FAX (410) 837-9716

6305 IVY LANE • SUITE 500
GREENBELT, MARYLAND 20770
(301) 345-7700
FAX (301) 345-1294

1133 21ST STREET, NW
WASHINGTON, DC 20007
(202) 293-8815

TO: Joint Committee on Administrative, Executive and Legislative Review

FROM: Michael V. Johansen and Geraldine Valentino on behalf of Long Term Care Pharmacy Alliance

RE: Opposition Proposed Pharmacy Regulation

THE MARYLAND LONG TERM CARE PHARMACY ALLIANCE DOES NOT SUPPORT DHMH'S PREFERRED DRUG LIST REGS AS DRAFTED (12/13/02)

- Members of the Long Term Care Pharmacy Alliance provide "institutional" pharmacy services to residents in long term care facilities – predominately skilled nursing facilities
  - "Institutional" pharmacies contract with the health facility to ensure the medication needs of the facility's patients are met
  - Typically, the patient does not contact the institutional pharmacy to obtain the prescription – the facility is responsible
  - LTC pharmacy is similar to a hospital institutional pharmacy
  - Members include NeighborCare, Omnicare and Pharmerica

- Payor Mix in Long Term Care Pharmacy is Different than Retail
  - In LTC, 70% is Medicaid, 15% is Medicare, and 15% is Commercial/MCO
  - In Retail, 30% is Medicaid, 0% is Medicare, and 70% is Commercial/Cash

Therefore, a PDL with hard Prior Authorization is not the "Norm" in LTC!

- A PDL with tiered copays and "hard" prior authorization works in retail because the prescription is not filled and sold to the customer until after the claim is

submitted to the payor and approved. Retail is a prospective claims adjudication system – and the customer can make choices prior to purchase.

VS

A PDL with a "hard" prior authorization process does not work in LTC –

- Claims are made primarily "retrospectively" – at the end of the month
- The Facility is responsible for patient care and demands the prescribed drug
- Many drugs are dispensed from within the facility within hours (or minutes) from the time the prescription is written
- Residents in a nursing home are by definition the some of the most frail and dependent patients in the health care system
- Residents may not be capable of advocating on their own behalf for the higher priced brand name drug prescribed by the provider

- Maryland's Medicaid Eligibility System in LTC is Not Real Time – the nursing home industry has raised repeatedly the existing problems with Medicaid eligibility – residents may be in a pending Medicaid status for months before eligibility (including retroactive eligibility) is granted
  - During the pending status, the State pharmacy payment system rejects all claims (in fact, the Department asked LTC pharmacies to stop submitting pharmacy claims for pending Medicaid residents in the monthly batch billings)
  - At any one time, it is estimated that 10-20% of all LTC pharmacy claims can be related to residents with pending Medicaid status
  - DHMH's proposed PDL and prior authorization system will not work in this environment

<u>AN ACCEPTABLE ALTERNATIVE</u>:

- The LTC Pharmacy Alliance met many times with DHMH to develop an integrated, quality focused pharmacy management system designed to reduce pharmacy and other health care costs
  - Consultant pharmacists already make recommendations to prescribers asking them to utilize less expensive, medically appropriate brand name drugs – in fact, often the prescriber agrees
  - Most of these recommendations come after the initial prescription therapy is ordered and dispensed – but each recommendation is based on a patient specific chart review – not a State regulation
  - The Alliance proposed a new program to increase the acceptance rate of consultant pharmacist recommendations through increased cooperation of the nursing facility, the prescribers, and the LTC pharmacies

- Not only would pharmacy costs be further reduced, but the recommendations would have reduced the State's expenditures on nursing care, lab fees, and other costs
- The Department has not decided to move ahead with this proposal – we believe it could generate overall savings in excess of those obtained by the current PDL regs

THE DEPARTMENT'S PDL AND PRIOR AUTHORIZATION PROPOSAL CANNOT BE SUCCESSFULLY IMPLEMENTED IN THE LONG TERM CARE SETTING – UNLESS A LENGTHY AND COSTLY OVERHAUL OF THE EXISTING CLAIM PAYMENT SYSTEMS AND CARE PROTOCOLS ARE IMPLEMENTED

WE ASK YOU TO ADVISE THE DEPARTMENT TO EXEMPT LONG TERM CARE FROM THIS PROCESS (LIKE FLORIDA HAS) -- AT LEAST UNTIL FURTHER ANALYSIS IS COMPLETED