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Mid-Atlantic Permanente Medical Group, P.C.
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc
2101 East Jefferson Street
Rockville, Maryland 20852

February 11, 2020

The Honorable Shane E. Pendergrass
Health and Government Operations Committee
House Office Building Room 240
6 Bladen Street
Annapolis, Maryland 21401

RE: HB 316 – Letter of Information

Dear Chair Pendergrass and Members of the Committee:

Kaiser Permanente appreciates the opportunity to provide information about HB 316, Public Health – Schedule II Controlled Dangerous Substances – Partial Filling of Prescriptions.

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.[1] Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for approximately 755,000 members. In Maryland, we deliver care to over 430,000 members.

HB 316 would permit a provider authorized to dispense a controlled dangerous substance to fill a prescription for a Schedule II controlled dangerous substance (CII), on request of the patient, in a quantity less than the prescribed amount. It also authorizes a provider to fill the remaining portion of a prescription that has been partially filled if the remaining portion is dispensed: (1) within 60 days after the prescription was partially filled; and (2) by the same authorized provider that partially filled the prescription or an authorized provider that receives a transferred prescription from the transferring provider, if the transferring provider has noted how much of the prescription was initially dispensed.

Kaiser Permanente remains committed to addressing the overuse, misuse and abuse of opioids by limiting opioid prescriptions overall and only prescribing when safe and appropriate. Our

[1] Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

[2] "A proactive, proven approach to addressing the opioid epidemic" Kaiser Permanente, 2018. https://business.kaiserpermanente.org/kp-difference/cost-management/addressing-opioid-epidemic

prescribers try to ensure patients are maintained on the lowest dose and shortest course of treatment appropriate to manage their condition.[2] KP supports efforts aimed to curtail the stockpiling of unused opioid medications.

Kaiser Permanente offers the following comments on HB 316:

- Proposed section 5-501(e)(3)(i) of the Criminal Law Article requires the dispenser to "promptly write out and file" certain partial-fill information, such as quantity dispensed. KP's pharmacy software electronically captures activities relating to the dispensing of a prescription instantaneously. We prefer HB 316 indicate that partial-fill documentation may be maintained in hard copy or electronic format.

- Pharmacy benefits are often designed to allow up to a certain number of days supply for a copay and does not necessarily cover a certain quantity. The bill would require an MCO or carrier to treat a partially-filled Schedule II prescription as if it had been filled one time for the purposes of charging or collecting any cost-sharing payment.

- A cost-sharing amount may vary for the patient based on which pharmacy fills the prescription. If a prescription was partially filled at more than one pharmacy, and the second dispenser was in a network outside the member's plan benefit, differing cost-sharing amounts may apply. We anticipate programming concerns between pharmacies and pharmacy benefit managers when trying to adjudicate cost-shares for an initial fill and the remaining fill. Another issue concerns patients who pay out-of-pocket for the partial quantity, rather than a copay; what amount would they be charged? For these reasons, determining the appropriate cost share amount could present challenges for an MCO or carrier to administer.

- When a prescription is dispensed, the pharmacy charges the carrier or its intermediary the cost of the drug plus a dispensing fee for reimbursement. If a copay can only be assessed once, the second pharmacy may still be able to charge the carrier or its intermediary another dispensing fee even though the co-pay for the patient would be zero. Thus, the carrier or intermediary would potentially be responsible for reimbursing more than one dispensing fee per prescription.

- The bill does not indicate whether a prescription could be partially filled more than once during the 60-day time period.

- Finally, since 21 CFR §1306.13 states Schedule II substances are not permitted to be refilled unless the pharmacy is unable to supply, our pharmacy system software indicates, after CII's are dispensed, that they are ineligible for refill. This aligns with federal law and, as currently programmed, a partial fill allowance such as the proposed would reflect to pharmacy staff that the remainder of the prescription could not be filled. Even if it was somehow deemed legal for a state to allow refills of CII prescriptions – or, based on the "fill" interpretation of this proposal – a software system change would be challenging

with an October 1, 2020 effective date. Programing of this nature is managed by nationally contracted vendors and would require substantial modifications, countrywide, to our pharmacy systems.

Thank you for the opportunity to comment and share our concerns regarding HB 316. Please feel free to contact Wayne Wilson at Wayne.D.Wilson@kp.org or (301) 816-5991 with questions.

Sincerely,

Wayne D. Wilson
Vice President, Government Programs and External Relations
Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.