Resolution Opposing Government Mandated Disclosure of Proprietary, Trade Secret Information

Summary
A resolution in opposition to recent efforts by some state legislatures to mandate that Pharmacy Benefit Managers (PBMs) disclose competitive, proprietary, and trade secret information to their clients and other entities. The Federal Trade Commission (FTC) and other federal government agencies have determined that PBMs have successfully helped employers, health plans and other healthcare purchasers significantly reduce their drug costs. The FTC has determined that government-mandated disclosures of proprietary information would undermine the vigorous competition in the marketplace that has enabled PBMs to continue to control drug costs for their clients.

Model Legislation
WHEREAS, vigorous competition leads to market innovations and increased efficiency in all economic sectors; and
WHEREAS, the cost structures which underlie market innovations are carefully guarded as proprietary trade secret information; and
WHEREAS, the contract is the fundamental basis for doing business in the United States and often contains proprietary business information; and
WHEREAS, the confidentiality and sanctity of private contracts give businesses protections and provide incentives to offer highly competitive and innovative services and contract terms; and
WHEREAS, pharmacy benefit managers (PBMs) enter into contracts to manage the pharmacy benefits of clients who are sophisticated purchasers of health care, including health plans, insurers, major employers, unions, and governmental agencies; and
WHEREAS, the Federal Trade Commission (FTC) has found competition between PBMs for contracts with sophisticated health plan sponsors to be “vigorous;” and
WHEREAS, the General Accounting Office (GAO), Congressional Budget Office (CBO) and Federal Trade Commission (FTC) have issued reports documenting how PBMs successfully have worked to hold down drug costs; and
WHEREAS, a number of proposals have been introduced in the states that would mandate by law the disclosure of private PBM contract terms that contain proprietary and competitive financial information, price negotiation strategies, and cost-saving methodologies; and
WHEREAS, the FTC has advised states that a mandate by law of the disclosure of proprietary financial information and cost structures would “hold PBMs to a standard that does not apply to other industries” and could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford;” and
WHEREAS, the FTC and Department of Justice (DOJ) have concluded that “[v]igorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms” and is “more likely to help ensure that gains from cost savings are passed on to consumers”; and
WHEREAS, the clients of PBMs are not supporting legislation that would require the mandatory disclosure of proprietary information.

NOW, THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council (ALEC) opposes proposals that would mandate contract provisions or establish legal relationships or obligations between PBMs and their clients that require disclosure of proprietary PBM contract terms that contain highly competitive, proprietary or trade secret information:

BE IT FURTHER RESOLVED that the American Legislative Exchange Council (ALEC) supports vigorous competition and the operation of free markets in the pharmaceutical benefits sector as the most effective means of guaranteeing quality service for the lowest price.