

## **Assessment of Public Comment for proposed Amendment of Part 440 of Title 12 NYCRRR**

The Chair and the Board received seven formal written comments via email and regular mail in response to the proposed amendment to Part 440 of 12 NYCRR. The public comment period remained open through February 4, 2019.

Five commenters expressed concern with the language requiring rebates received by a pharmacy network to be passed through to insured employers. The reasons offered include: rebates are generally only available on brand name drugs and the Formulary is based on generic drugs; rebates are not allocable to a particular carrier or claim; rebates are calculated in to the contract price; pharmacy benefit managers should not have to do reporting to the Board, and: rebate information is confidential and proprietary. The Board clarified in the final regulation that passing through of rebates and third-party revenue must be in accordance with contract term that account for the methodology for such transactions and that it is the insurance carrier's responsibility to report to the Board when requested.

The Board received three comments that the price paid for prescription drugs should be governed by the contract between the pharmacy benefits manager and the insurance carrier. As the "lesser of" standard was proposed to ensure that New York State employees receive the least costly prescriptions available in the community, the Board has made no change in response to this comment.

The Board received one comment that suggested a change to the definition of pharmacy network. As this is the definition that has been in place for a number of years and the Board is unaware as to any issues with use of this definition, no change has been made in response to this comment.

The Board received five comments in support of the changes to compound medication pricing. One no-fault carrier suggested further modifications. The Board has made no further changes as a result of this comment but notes that the revised proposed drug formulary regulation (proposed 12 NYCRR Part 441) does contain further restraints on prescription of compound medications.

One commenter suggested that the Board select one source as the provider of Average Wholesale Price (AWP). The Board has permitted use of more than one provider of AWP for many years and the Board is unaware of any issues with this process. Accordingly, no change has been made in response to this comment.