Senate Human Services Committee

State of North Dakota

Madam Chair Judy Lee and Committee Members

Re: HB 1233

March 16, 2021

Madam Chair Lee and Committee Members:

My name is Gary Boehler, a pharmacist registered in North Dakota. I have been a pharmacist for 51 years and have had much focus on pharmacy benefit managers and how they impact the costs of prescription drugs over the past 35 years. To sum it up, I have learned a lot.

My past experiences and current work includes a 34 year role with Thrifty White Drug being in middle and upper management positions prior to my retirement there in 2011. Since then, and as a consultant, I confer with pharmacies all over the country, work on anticompetitive issues with the Federal Trade Commission in Washington, D.C. and correspond with several state attorneys general across the country who are clearly interested in learning more about PBMs and their heinous activities. I consult for some 500 pharmacies in the Upper Midwest states on an as needed basis, the majority of it having to do with PBMs, their contracts, reimbursements, and recoupment fees. I also do some consulting with plan sponsors to help them through the "mine fields" many of them endure with their PBM contracts.

I am in full support of HB 1233 as I believe passing this bill with the ensuing audit language will clearly delineate what I have come to strongly believe will show, in this instance, how North Dakota taxpayer dollars have been and continue to be wasted and those dollars being pulled out of the state of North Dakota and simply used to enrich the PBMs, their vertically integrated subsidiaries, and shareholders, and all of this at the expense of patients, plan sponsors, and taxpayers.

My focus in today's testimony will focus on taxpayer funded prescription drug plans only and below I am listing various states' activities around the country that show the flagrant abuse and huge overcharges by PBMs that impact each and every one of us paying taxes. Here are examples:

Ohio – David Yost, state attorney general for Ohio, uncovered ***$225 million*** in spread pricing by two PBMs. Now, the state has moved over to a lesser known PBM, Gainswell, which has no apparent conflicts of interest by not owning mail order or specialty pharmacies by which they might compete with the state of Ohio.

Ohio – in another lawsuit just filed, Mr. Yost filed suit against Centene, another PBM doing managed care Medicaid in Ohio that used Envolve Pharmacy Solution and their apparent use of networks of subcontractors to provide prescription drug benefits in order to misrepresent pharmacy costs and therefore artificially inflate fees to the state of Ohio. Much more to follow, but another example.

Kentucky – uncovered ***$123 million*** in spread pricing for its Medicaid system in 2018.

North Dakota –per Brendan Joyce's report that was just released some weeks back, this small state will save ***$17 million*** in spread pricing fees after OptumRx was removed from managed care Medicaid January 1, 2020. And those savings are BEFORE any other administrative fees incurred. Those taxpayer funded savings stay right here in North Dakota and are not being shipped off to another state.

West Virginia – beginning in 2018 this state began saving ***$30 million*** per year in spread pricing fees.

Tennessee - has recovered in excess of ***$150 million*** in overcharges by PBMs.

Louisiana – has formed its own "PBM" of sorts to administer its own Medicaid claims. North Dakota has basically done the same thing, but one can only surmise what the savings might be were in the near future North Dakota do the same program for NDPERS. Louisiana saw the light and reacted wisely.

California – this state is on top in the United States for Medicaid recipients (18 million) Effective April 1, 2021, California is carving out all PBMs from their managed care programs, a bullet proof condemnation of what PBMS have been taking advantage of in that state as well, as well as others with changes done.

Georgia – this state has enacted a 'no spread pricing reimbursement" model wherein PBMs simply get a flat fee per prescription. One would only then assume a 100% pass through on manufacturer rebates, but I have no knowledge of what the flat fee per prescription entails. Georgia has "cut" the gravy from PBMs!

Illinois – this session of the IL legislature is looking at removing PBMs from managed care Medicaid. The average gross profit per prescription today per sources I have is $0.89 and that is before any costs of doing business are calculated. Spread pricing numbers are also being pursued.

Florida – has calculated that for every prescription filled for its Medicaid recipients, the average spread per prescription is $8.64, which is equal to 9.5% of total plan spend for that state. On December 8, 2020 the Florida Pharmacy Association estimated ***$113 million*** in markups (spread pricing) by PBMs.

Ohio – the state of Ohio has filed a lawsuit against **OptumRx** with regards to the state's Worker's Compensation program. According to Ohio's attorney general, OptumRx billed the state far in excess of what was detailed in the contract the state had with **OptumRx**. The state did not renew its contract with

OptumRx in 2018. The lawsuit will likely be well in excess of $***20 million*** based on the attorney general's allegations.

New York – early estimates on **PBM spread pricing** for NY state Medicaid recipients is ***$300 million***.

In May of 2016 the state realized a 10% spread price on just generics. During the fourth quarter of 2017, spread was found on 39% of all generic claims, averaging $5.62 per claim. Note that does not include numbers for brand name drugs! New York also discovered that from Q1 of 2016 through Q4 of 2017, PBMs cut the reimbursements to pharmacies by 83%, resulting in an average gross margin per prescription of $0.53. In the fourth quarter of 2017 50% of the PBM spread pricing came from just 6% of the dispensed generic drug claims. The same can be said for claims being reimbursed by **OptumRx** for NDPERS prescription claims. Percentages may vary, but the trend is there and can be substantiated. I find it extremely interesting that OptumRx hides behind Sanford Health vs. direct contracting with NDPERS one on one. It should create flags about what is really happening, and it has. Watch for the following salvos!

I am also attaching to this testimony some examples showing how **OptumRx** and **Express Scripts** are fleecing our senior citizens who are on Medicare Part D by marking up generic drugs enormously, then charging these patients an astronomical copay, which in reality is nothing more than a patient clawback. This comes to me from a pharmacy in Iowa, but if it is happening in Iowa, it is happening in North Dakota as well.

All of the examples I have shown make it very clear the audit language in HB1233 needs full bipartisan support to end these transgressions, at least for the state of North Dakota, and its well-known reputation for "taking care of its own."

Thank you for allowing me to provide this testimony on HB 1233. I can always be reached with further questions. My contact information is shown below.

Sincerely,

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