

Chairman Barta and Members of the Senate Industry and Business Committee -

Good Afternoon – my name is Dylan Wheeler, and I serve as Head of Government Affairs for Sanford Health Plan – speaking today in opposition to HB1584. We would request a Do Not Pass recommendation on HB1584.

While on its face, HB1584 suggests that it is limited in scope to pharmacy benefit managers – it is – in fact – much broader in application and in impact to North Dakota. This includes families, businesses, and individuals who obtain their health insurance coverage through a self-funded health plan with the employer. As we know, a large portion of these populations do receive coverage through their employer. HB1584 eliminates and directly rescinds reference to ERISA pre-emption from the term “covered entity” in North Dakota Century Code. This will have the effect of the North Dakota Insurance Department regulating self-funded health plans that administer benefits through PBMs.

Self-funded employer groups rely on PBMs to administer, negotiate, and adapt to the precise benefit design that the employer group is requesting. To put it another way – self-funded groups maintain a certain amount of statutory and regulatory flexibility. Why is this? This is because, in a self-funded health plan arrangement, the employer group takes on the financial risk of paying out claims. Whereas, in a fully-insured arrangement, the insurer takes on the financial risk. This is notable and needs to be understood. Because self-funded groups take on the financial risk, they are mostly exempt from state regulation. Here, with HB1584 – proponents are seeking to encroach on that space, take away business choice, and bring a whole new level of red tape to North Dakota.

ERISA pre-emption and self-funded regulation is a diverse and complex topic, requiring an in-depth analysis of applicable law, litigation, and understanding of state impact. To be clear in our comments, Sanford Health Plan is not suggesting that everything that PBMs do is perfect and should not be scrutinized. Rather, Sanford Health Plan opposes HB1584 because it would take away self-funded clients’ ability to innovate unique pharmacy benefit plan designs, impose additional red tape on businesses, and may lead to increased costs on North Dakota consumers. Additionally, HB1584 may lead to litigation as the underlying subject has not been directly addressed by the Courts. There has been some precedent on ERISA pre-emption regarding pharmacy benefits, but the broad scope of HB1584 has not been tested.

As this committee has done with several bills this session, we ask that the committee carefully consider the implications to the business community, existing PBM regulations, and what the long-term effects of HB1584 would have in North Dakota.

I appreciate the opportunity to submit comments and please let me know if you have any questions.

Respectfully,

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Sanford Health Plan