



**Senate Human Services Committee  
HB 1233 – Madam Chair Judy Lee  
3/17/21 – 9:00 A.M.**

Madam Chair and members of the committee, for the record, my name is Mike Schwab, Executive Vice President of the North Dakota Pharmacists Association. We are here today in support of HB 1233.

HB 1233 requires a performance audit of the prescription drug benefit for NDPERS, more specifically an audit of the PBM used to administer the prescription drug benefit. This bill was hog housed to better align with current laws related to performance audits under chapter 54-52.1-04.16., which deals with NDPERS. If it is okay with the committee, I would like to review the various sections of the bill to provide a little more context to the discussion.

**Section 1** – This section clarifies the audit must be performed whether the contract is directly between NDPERS and the PBM, through a self-insurance plan or contracted through a carrier.

**Section 2** – This section no longer makes it optional for NDPERS to conduct an audit. It requires an audit take place and requires the audit to be directly through the PBM and not the carrier. Subsections A-G clarify claim level data must be available to not only the NDPERS board but also the auditor who will be hired to conduct the audit. This subsection also spells out the type of claim level data that must be provided to the auditors. In addition, subsection G states the contract between the carrier and PBM must be disclosed to the auditor. This is a necessity so the auditor can see the specific performance guarantees in the contract. This also allows the auditor to evaluate if the PBM is adhering to the contract terms to the benefit of NDPERS or not.

**Subdivision 3 – Letter A** – This clarifies NDPERS must use an independent auditor and the NDPERS may not compensate the auditor based on “findings” and must be compensated on a flat fee or hourly basis.

**Subdivision 3 – Letter B** – This section clarifies the PBM may not redact or alter information that is to be provided to the auditor. This subdivision also outlines if information is considered “trade secret”; it would remain as a confidential record.

**Subdivision 3 – Letter C** – This section lists various audit elements that are important for the auditor to review. It will help the auditor validate if the terms and financial guarantees of the PBM contract are being met to the benefit of NDPERS and taxpayers.

**Subdivision 3 – Letter D** – This section references potential medical prescription drug rebates that are available under the NDPERS plan. It could help verify who retained the rebates and what dollar amounts are involved.

**Subdivision 3 – Letter E** – This section speaks to the fact that the large PBMs now own, and control and utilize rebate aggregators. These are companies that provide formulary rebate administrative services and distributes rebates back to the PBMs. This is important because PBMs often own the rebate aggregators where the money comes in one door and out the other all while being controlled and owned by the same entity. When the PBM says they pass along the rebate dollars, this is one way to verify if in fact the rebates make their way back to the employer as well as it will help show the degree to which the PBMs keep rebates or what types of fees, categories and broad exclusions are used when calculating rebates owed back to NDPERS.

**Subdivision 3 – Letter F** – This section outlines if the PBM did not adhere to the contract or did not meet certain guarantees listed in the contract and the PBM must pay back any potential monies to NDPERS.

**The Last Section – Number 4** – clearly states the NDPERS board shall report any findings to the ND Employee Benefits Committee.

Given the fact that our member pharmacies are telling our office that NDPERS prescription benefit plan administered through Optum Rx pays North Dakota pharmacies below Medicaid rates in a large percent of claims, we support an audit of Optum Rx because as prescription drug costs to the NDPERS plan increase, we know it is not because pharmacies are paid too much. This bill will verify if the PBM is operating fairly and is adhering to the contract term guarantees. This audit could also identify if the PBM is making more than their fair share while underpaying pharmacies in this state. It is also our opinion based on evidence that ND pharmacies are subsidizing the NDPERS prescription drug benefit to a large degree. Yes, that is a bold statement. However, when pharmacies are consistently paid below Medicaid rates for the largest employer-based plan in the state, I am not sure how else it should be stated.

The most frustrating part for our members is this legislative assembly continues to authorize the 2.5 times Medicaid rates for the medical side of Medicaid Expansion which goes to benefit our healthcare facilities in the state. However, when it comes to the prescription drug benefit side of the largest employer-based taxpayer funded plan in the state, pharmacies are consistently paid below Medicaid rates. It is double standard that frankly put, in the 20 years that I have been a registered lobbyist, does more that frustrate me. If physicians, hospitals, dentists, or other healthcare providers were paid below Medicaid rates, how well would that be received and how long would it last?

This bill will help identify if the PBM is being fair, if the PBM is disclosing certain revenue streams, if the PBM is adhering to its contract obligations, and it will also identify if NDPERS is should possibly renegotiate its PBM contract terms and conditions to the benefit of the taxpayers of this state.

I would respectfully request an amendment to HB 1233. On page 6 – Lines 9-10 – Insert “current” and “2019, 2020 and current year” so the sentence reads **“During the current term of the contract for the prescription drug coverage, the board shall conduct a performance audit of 2019, 2020 and the current year of the prescription drug coverage and any related...etc.**

That concludes my testimony, and I would be happy to answer any questions you might have at this time. Thank you for your time and attention today.

Respectfully Submitted,

A handwritten signature in black ink that reads "Mike Schwab". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mike Schwab

EVP - NDPhA