

February 11, 2025

The Honorable Jonathan Warrey
ND House Committee on Industry, Business and Labor

Via Online Testimony Submission: <https://ndlegis.gov/legend/committee/testimony/public-testimony/4528/?hearing=12031>

RE: HB 1584: A BILL for an Act to create and enact two new sections to chapter 26.1-27.1 of the North Dakota Century Code, relating to pharmacy benefits managers; to amend and reenact sections 26.1-27.1-01, 26.1-27.1-02, 26.1-27.1-04, 26.1-27.1-06 and 26.1-27.1-07 of the North Dakota Century Code, relating to pharmacy benefits managers; to provide a penalty; and to declare an emergency: Oppose

Dear Chair Warry and Members of the House Committee on Industry, Business and Labor:

Thank you for the opportunity to comment on HB 1584. I represent Prime Therapeutics (Prime), a pharmacy benefit manager (PBM) owned by 19 not-for-profit Blue Cross and Blue Shield Insurers, subsidiaries, or affiliates of those Insurers, including Blue Cross & Blue Shield of North Dakota. HB 1584 seeks remove the ERISA exemption Section 26.1-27.1-01 of the North Dakota Century Code. It is for this reason, among others that Prime opposes this legislation.

Prime helps people get the medicine they need to feel better and live well by managing pharmacy benefits for health plans, employers, and government programs including Medicare and Medicaid. Our company manages pharmacy claims for more than 30 million people nationally and offers clinical services for people with complex medical conditions. Our business model relies on transparency and advocating for simpler, lowest-net-cost pricing for drugs. Importantly, Prime is not focused on driving profit margins.

What is the intent of this bill?

Based on previous testimony in this committee for a separate bill, it appeared there was some interpretation of past court decisions that somehow allows for the removal of an exclusion to self-funded health plans organized under the federal Employee Retirement Income Security Act (ERISA). Regardless of interpretation, I don't understand the reasoning behind the removal. This simply strips those protected entities in the state of North Dakota from choosing the right benefits for their company/employees. This will drastically increase costs for those businesses and their employees. Why? Proponents of the bill will argue that this somehow holds Pharmacy Benefit Managers (PBMs) "accountable." How? Employers send PBMs their benefit book, and we implement it. By prohibiting the function of the PBM to implement the benefit, the legislation is prohibiting the employer from choosing the benefit design that works for them. This law would require the enforcing entity to contact each employer to inform them they can or cannot choose their desired benefit for their business and their employees. Prime Therapeutics believes in these protected groups' rights to choose the right benefit for their employees, and these businesses are protected under federal law.

Extraterritoriality Factor

Extraterritoriality refers to the application of a nation's law to persons, conduct, or property outside its own territory. For arguments sake, let's say this law passes. Let's also say I have a business in Illinois (Illinois decides to pass this same law) with employees in North Dakota. Under Illinois state law, I must cover Mifepristone and Misoprostol. My employees in North Dakota can now go to a pharmacy in North Dakota and fill this prescription. The idea here is that extraterritoriality cuts both ways. This is the very reason for the ERISA exemption. What happens when every state does the same thing? What trumps what?

26.1-27.1-04. Prohibited Practices

(3) states "A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts with at least thirty days to respond to respond and signatures must be obtained from the pharmacy or entities contracting on

behalf of pharmacies.” This language does not consider instances where state and/or federal law may require immediate amendments to contracts. This may require a signature earlier than 30 days. The same would be true for (4) “A pharmacy must be allowed to opt-out of a pharmacy benefits managers contract by providing at least a ninety-day notice.”

Section 6: Enforcement

(3) “This section does not prohibit the commissioner, state board of pharmacy, or department of health and human services from collaborating through joint exercise of common powers agreements.” There is no definition of “collaboration through joint exercise of common powers agreements” in this legislation. I would like to understand from the writers of this legislation what that means.

Thank you again, for allowing me the opportunity to testify today.

Respectfully,



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