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**House Government and Veterans Affairs Committee
HB 1233 - Chairman Jim Kasper
Pioneer Room 2/4/2021**

Chairman Kasper 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 relating to an audit of the pharmacy benefit manager (PBM) used in managing the prescription drug benefit for the North Dakota Public Employees Retirement System.

Before I get too far into my testimony, I must clarify our support for this bill. Again, we are supportive of the concept of the bill but feel there are issues with the current bill language that need to be addressed. Chairman, if you do not object, I will review some of our concerns with the current bill language.

If you look at page 1 – lines 8-9 where it references chapter 19-03.6:

I might be wrong, but that chapter of century code became law back in 2011 and is intended for how audits are to be conducted of pharmacies by pharmacy benefit managers. I know the title says “pharmacy benefit manager – audits” but again, if you read that chapter it seems clear the intent of the language deals with audits of pharmacies by pharmacy benefit managers, not an audit of the pharmacy benefit manager contract and certain aspects or guarantees in the PBM contract.

If you look at page 1 – lines 9-11:

It states the public employee retirement system may not select a competitor of the pharmacy benefit manager, pharmaceutical manufacturer, etc. We suggest using language similar in other areas of ND Century Code such as “the public employee retirement system shall use an independent auditor who has no conflict of interest with the carrier, pharmacy benefit manager or board.”



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If you look at page 1 – lines 13-15:

This provision speaks to confidentiality. I respectfully comment that this section needs to be carefully thought through. In some cases, the pharmacy benefit manager has confidentiality agreements they have created and drafted for audits such as this which prevent any findings or certain findings from being disclosed. Maybe narrowing the confidentiality aspect to those things that can be proven to be “trade secrets” would fall under a locked confidentiality order.

As one moves through the rest of the bill, it is very comprehensive in terms of all the areas to be audited. While this is good, it is often cost prohibitive and time intensive. Again, I mean no disrespect, but I would suggest limiting the audit to areas that have the most impact and potentially the greatest financial impact. The areas I am referencing deal with performance audits that deal with drug price guarantees (brand, generic, specialty drugs, etc.), payments made for drugs, administrative fees and other financial benefit guarantees.

Again, there are a number of good things listed in the bill such as (1) auditors may not be compensated based on financial findings or recoveries and compensation must be on a flat fee or hourly basis; (2) access to certain claims and transaction data; (3) reimbursement costs; (4) data and documents provided by the pharmacy benefit manager may not be redacted or altered; and compensation back to the public employee retirement system for improper implementation, etc.

If you look at page 5 – lines 1-8:

This section speaks to overpayments made by NDPERS and I feel it is important to look at overpayments. However, in the same spirit, if we are looking at overpayments, we should also be looking at underpayments to providers as well. In addition, if overpayments or fraud is identified, we need to allow the respective parties identified an opportunity to respond to the allegations and/or



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findings. We give the pharmacy benefit manager the same opportunity in the last section of the bill, so I feel it is naturally fair to give all parties the same opportunity.

Lastly, I would like to touch on the fiscal note attached to this bill. I am a little confused by the fiscal note. First, maybe it is best to limit the audit language to only the commercial side of the public employee retirement system or at least to start to minimize cost. Regardless, I am not sure why 3 different PBMs were listed in the fiscal note. I can understand two PBMs due to NDPERS using one PBM for their commercial plan and one for their retiree plan. Even if you issue an RFP for the Part D plan, I assume you would still only have one PBM for that plan not two? I am sure others will explain why three PBMs were listed in the fiscal note.

Also, the fiscal note is based off the assumption that all areas of the bill will be used in conducting the audit. **If you look at page 1 – lines 18-20.** You will see the language states NDPERS and the auditors will pick ONE or more areas to be audited which may include...and then it lists the different areas to pick from. The fiscal note appears to be based off if ALL areas mentioned in the bill would be audited. Maybe I am reading that wrong.

That concludes my testimony, and I would be happy to try and answer any questions you might have for me.

Respectfully Submitted,

A handwritten signature in black ink that reads "Mike".

Mike Schwab
EVP - NDPhA