

January 5, 2020

The Honorable Robin Weisz, Chair
House Human Services Committee
North Dakota State Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: House Bill No. 1032

Dear Chairman Weisz:

Thank you for the opportunity to comment on House Bill No. 1032 today. I represent Prime Therapeutics, a pharmacy benefit manager (PBM) owned by 18 not-for-profit Blue Cross and Blue Shield insurers, subsidiaries or affiliates of those insurers, including Blue Cross and Blue Shield of North Dakota (BCBSND). For the reasons stated herein, we oppose this bill.

Prime Therapeutics 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 or attaining the largest rebate. To control costs, Prime's clients rely on our clinical expertise and drug management tools to reduce overall drug spending.

As an initial matter, this bill will harm Prime's efforts to reduce drug spending by further consolidating the power of North Dakota pharmacies and pharmacists via the delegation of oversight and power to the Board of Pharmacy (Board). The Supreme Court held in *North Carolina State Board of Dental Examiners v. FTC* that oversight of a market cannot be abandoned "to the unsupervised control of active market participants . . ."¹ Similar to that case, the Board's members are active market participants in the market this bill aims to regulate. Its pharmacist members negotiate contracts with PBMs, which are one of the tools PBMs use to drive down overall spending on drugs. Requiring a PBM to disclose its confidential and proprietary data related to the terms of these contracts would eliminate competition in the pharmacy space by creating a *de facto* collective bargaining arrangement among North Dakota pharmacists. The result of such an arrangement would be an increase in overall drug spending and thus increased prices for North Dakota citizens.

¹ 135 S. Ct. 1101 (2015)


Next, this bill does not adequately protect a PBM's proprietary or confidential information. Prime only supports one health plan in North Dakota, BCBSND. As written, the data in the bill's required reports can easily be tied back to Prime and BCBSND. Further, requiring Prime to report this data to the Board would be entirely inappropriate considering the role of the Board's members in the prescription drug supply chain and their negotiations with PBMs. Additional protections are needed for this data to ensure that proprietary and confidential data remains as such. We look forward to working with the Committee on this issue to ensure our competitive data is not subject to open records requests.

This bill also raises concerns in its targeting of rebates. On pg. 3, starting at line 22, the bill presumes that an "increase in pharmacy benefit manager rebates" would be a cause for an increase in the price of a drug. In fact, the price for a rebate-eligible drug (i.e., brand-name drugs) is set independently by the drug manufacturer. Prime uses rebates to secure price concessions on those list prices from drug manufacturers and then passes those rebate dollars back to its health plan clients, such as Blue Cross and Blue Shield of North Dakota. Rather than increasing the price of a drug, which is done by drug manufacturers alone, rebates soften the financial burden on the healthcare system by driving down the overall cost of care.

Finally, Prime has concerns about the scope of data being requested. This bill would require PBMs to report on "aggregated rebates, fees, price protection payments, and any other payments collected from each drug manufacturer." This is too broadly written and would encompass financial arrangements outside of the scope of administering the pharmacy benefit for a health care plan. Further, the bill would require PBMs to report "aggregated rebates passed on to employers." Prime passes rebate dollars to its health care plan clients. It is up to those health care plan clients what to do with those rebate dollars, such as passing them to employers. In short, this information is either unrelated or outside of Prime's control and thus does not fit within a reporting scheme for Prime.

Prime supports *meaningful* transparency across the prescription drug supply chain and appreciates the opportunity to comment on this proposed solution. Ultimately, it delegates too much authority to PBMs' competitors (thus harming competition in the prescription drug marketplace) and targets PBM tools (e.g., rebates) that help lower the overall cost of care. For these reasons, Prime opposes House Bill No. 1032.

Sincerely,



Alex Sommer, J.D.
Prime Therapeutics
Alexander.Sommer@primetherapeutics.com