NORTH DAKOTA PHARMACISTS ASSOCIATION

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House Human Services Committee – SB 2378
Chairman Robin Weisz
March 14, 2023

Chairman Weisz 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 SB 2378.

SB 2378 is looking to address a number of problems and concerns many healthcare providers and facilities are experiencing as it relates to clinician administered drugs and the patient care process. Prior to last session, our office was approached with a request to address what we in the world of pharmacy call "white bagging" and "brown bagging" issues. The request came late and we ran out of time. However, since last session, we have heard from members in all parts of the state regarding an increase in insurance mandates requiring patients to have their therapies/medications exclusively dispensed by an insurer or pharmacy benefits manager (PBM) mail order pharmacy or PBM mail order affiliates.

It is important to note, the big three insurance companies are all now vertically integrated and control 80% of the health plan pharmacy benefit market. The big three are CVS/Caremark/Aetna (#4 on Forbes), United Health/Optum Rx (#5 on Forbes) and Cigna/Express Scripts (#12 on Forbes). They are all in the business of pharmacy owning mail order pharmacies, brick and mortar pharmacies and specialty mail order pharmacies.

What is "white bagging"? This process happens when a PBM or insurer mandates certain drugs are to be delivered to a healthcare practice which, are then supposed to be administered to the patient. The drugs have to come from an external source which is most often the PBMs mail order pharmacy or PBM affiliate pharmacies. This process causes numerous issues and concerns for healthcare providers and patients. While PBMs argue that white bagging lowers healthcare costs, healthcare providers say the practice captures more revenue for the PBMs and may violate patient standards of care. White bagging can also bypass pharmacy safety checks, health system formularies,

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supply chain integrity and interferes with the care planning processes. There is a high level of coordination and timing that has to take place with white bagging policies as well. In addition, dosing errors, delivery delays, lost shipments and receiving the wrong drug happens which negatively impacts patient outcomes, delays patient care, may require another appointment and can create drug waste. There are a whole host of other patient and clinical considerations to think about as well. Those considerations include the inability to adjust drug dosages in response to urgent laboratory or clinical findings. When these types of issues happen due to the insurer/PBM anti-competitive mandate requirements, we are actually increasing costs.

What is "brown bagging"? This process is similar to white bagging with one main difference. In this case, the drug comes directly to the patient and is in the patient's custody. The many reasons listed above related to white bagging apply to brown bagging as well. However, there are a couple of additional important points worth noting. Under this process, there are elevated safety and product integrity concerns. A provider's liability risk is also elevated under these types of patient steering arrangements.

In 2021, Vizient, Inc released a survey of hospital respondents titled "Survey on the patient care impact and additional expense of white/brown bagging". There are a number of highlights worth noting from the survey. It was estimated that health systems are spending $310 million annually in estimated labor required to manage the additional clinical, operational, logistical and patient care work associated with these kinds of PBMs mandates. It was also noted in the survey that 92% of the respondents experienced patient care issues due to problems with medication received through these PBM mandates. The top issues respondents reported:

- 83% - Product did not arrive in time for administration to the patient.
- 66% - Product delivered was no longer correct due to updated patient treatment course or dose needing to be changed.
- 42% - Product delivered is inappropriate or the wrong dose.

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You will hear PBMs state that these types of mandated requirements save money. The Auditor of the State of Ohio produced a state report which found discriminatory reimbursement practices because the PBMs compensated their affiliate pharmacies at a higher rate than other providers. (Candisky, Cathy – Columbus Dispatch - April 30, 2019). This same type of practice has been found to be taking in many other states as well. Arkansas for example found the PBMs were steering patients to its wholly owned affiliate so that it could pay itself more and was in fact paying itself more. (Arkansas Study and Arkansas Department of Insurance Report – October 2020). An analysis in Florida in 2020 showed PBM affiliated pharmacies were making, 18x to 109x more profit over the cost of the drugs than the non-affiliated pharmacies. In Florida, specialty drugs are not only steered to PBM-affiliated pharmacies, but they are also more expensive at the PBM affiliated pharmacies. (3 Axis Advisors - January 2020). The State of Oklahoma also found PBM owned and affiliated pharmacies were reimbursing themselves at higher rates. Minnesota, Wisconsin, Florida and other states have expressed concerns over the practice of PBMs steering patients to PBM-owned pharmacies.

States, such as Louisiana, Virginia, Arkansas, Georgia, and others have already passed laws in an attempt to stop PBM steering and mandated mail order practices by the PBMs. Other states (like ND) are attempting to do the same. In January of 2023, Governor Ron DeSantis and the State of Florida announced an aggressive comprehensive PBM reform platform. He announced many PBM reforms but two specific reforms deal with consumer protections just like SB 2378. Two main reforms protecting small businesses and patients deal with (1) prohibiting PBMs from mandating consumers use a PBM mail-order pharmacy while allowing consumers to opt-into the service and (2) prohibit anti-competitive PBM practices such as mandating a narrow network that only includes PBM owned or affiliated pharmacies.

In 2022, the Federal Trade Commission (FTC) launched an inquiry into PBM business practices, contracting practices and potential anticompetitive behavior and its impact on the industry and consumers/patients. The FTC has a number of topics they are looking into and some of those topics speak to what we are talking about today.

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- FTC Topic – The impact of PBM rebates and fees on formulary design and patients' ability to access prescribed medications without endangering their health, creating unnecessary delay, or imposing administrative and other burdens on patients and providers.
- FTC Topic – PBMs use of methods to steer patients away from non-affiliated PBM pharmacies and methods of distribution towards PBM-owned and affiliated pharmacies.
- FTC Topic – PBMs policies and practices related to specialty drugs and pharmacies, including criteria for designation and practices for encouraging the use of PBM affiliated specialty pharmacies, and practices relating to dispensing high-cost drugs over alternatives.

This year, in March 2023, the U.S. House Oversight and Accountability Committee announced it is launching an investigation into PBMs over alleged anti-competitive tactics according to a press release by Chairman James Comer (R-KY). Committee members previously analyzed PBMs in a December 2021 report, and found that PBM consolidation has raised costs for consumers and has negatively impacted patient health. Chairman Comer sent letters to all the major PBMs and the letters are worth the read. (March 2023 – House Oversight Committee).

There are others who would like to testify today so let me conclude by asking once again for your support of SB 2378. When it comes to clinician administered drugs, they should be dispensed as close to the patient's point of care as possible. We should do our best to support product integrity and minimize as many risks and safety concerns as possible for patients. SB 2378 gives patients the right and choice to determine which participating provider they want providing their care and the right to determine from whom they purchase services. Thank you for your time. I will try to do my best to answer any questions.

Respectfully submitted,

Mike Schwab
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Candisky, Cathy. (April 30, 2019). Ohio Medicaid officials to crack down on PBM specialty drug practice. Columbus Dispatch. https://stories.usatodaynetwork.com/sideeffects/ohio-medicaid-officials-crack-pbm-specialty-drug-practice/

Source: Rowland, Darrel. (October 27, 2021). Medicaid chief quietly drops bombshell: Millions obtained by PBMs unaccounted for by state. Columbus Dispatch. https://www.dispatch.com/story/news/2021/10/27/health-care-monopoly-rais es-drug-costs-consumers-pharmacists-say-pbms-prescription-cvs-united-cy gna/8513593002

Arkansas study: Reimbursements are higher for national chains | NCPA – Link to Arkansas Department of Insurance report included as a link as well.

Vizient, Inc. – 2021 Survey on the Patient Care Impact and Additional Expense of White/Brown Bagging: Survey on patient care impact (vizientinc.com)

Florida Governor Ron DeSantis - Lower Prescription Drug Prices_ (flgov.com)

July 2022 - FTC Launches Inquiry Into Prescription Drug Middlemen Industry | Federal Trade Commission

March 8, 2023 - Comer Launches Investigation into Pharmacy Benefit Managers' Role in Rising Health Care Costs - United States House Committee on Oversight and Accountability