NDPhA
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Senate Government Operations Appropriations Committee
HB 1584 – 4/8/25 – 3:00pm
Senator Wanzek – Chairman

Chairman Wanzek and members of the committee, my name is Mike Schwab, Executive Vice President of the North Dakota Pharmacists Association. We are here today in support of HB 1584.

HB 1584 looks to address a legal concern, changes to the marketplace and how can North Dakota create a process for implementing and enforcing already existing PBM laws. There has been a lot of good discussion in both policy committees who have heard and passed this bill. We anticipated most of the discussion would center around the appropriation side of the bill which is why we are here today.

Chairman and members of the committee, licensing and providing a pathway for enforcing PBM laws has been talked about in the past, including during interim hearings. There is one common theme around the country, there is bipartisan support to pass PBM reforms and action to enforce PBM laws. There is a lot of movement at the Federal Trade Commission, Congressional hearings, many reports and investigations centered around the anticompetitive behavior of PBMs, patient steering, lack of transparency, spread pricing and many transactions taken place that benefit the PBM over patients, employers, government entities and taxpayers.

This legislative assembly has a long history of passing PBM reform and transparency laws by an overwhelming majority in both Chambers. To-date, ND continues to punt on any meaningful oversight and enforcement of our PBMs laws. HB 1584 looks to finally bring a formal process for licensure, oversight and enforcement of our existing PBM laws.

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I would like to highlight some of the issues going on in the PBM market around the country and specifically in ND. Here are 3 press releases from the Federal Trade Commission regarding their recent reports and findings on PBMs. One was released in 2024 and another one in 2025.

FTC Recent Press Releases:
https://www.ftc.gov/reports/pharmacy-benefit-managers-report

https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen

https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices

I have also included a link to the U.S. House Oversight and Accountability Committee which has held numerous PBM hearings in the past couple of years. Chairman Comer (R-KY) issued a rather telling report in 2024. His committee also issued letters to the 3 main PBMs who testified giving them a deadline to correct their statements in front of his committee.

Comer Releases Report on PBMs' Harmful Pricing Tactics and Role in Rising Health Care Costs - United States House Committee on Oversight and Accountability

What has been happening in other states around the country? Below I provided a few highlights regarding what other states are finding when looking into PBM practices.

Ohio: the state Auditor found that, PBMs pocketed $224.8 million through the spread alone during a one-year period.

Kentucky: In response to a state report that found PBMs keep $123.5 million in spread annually, the Attorney General has launched an investigation into allegations that the PBMs have overcharged the state and discriminated against independent pharmacies.

Michigan: Drug price manipulation allowed PBMs to overcharge Michigan Medicaid by at least $64 million.

Virginia: A state-commissioned report on Medicaid found PBMs pocket $29 million in spread pricing alone.

Maryland: A state Medicaid report found PBMs pocket $72 million annually in spread pricing alone.

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Florida: A report found PBMs steer patients to PBM-affiliated pharmacies, and "when it comes to dispensing brand name drugs, MCO/PBM-affiliated pharmacies are making 18x to 109x more profit over the cost of the drugs than the typical community pharmacy."

Illinois: An audit found $200 million of spread pricing in 2021-2022.

Oregon: A 2023 audit found insufficient transparency and compliance with highly inconsistent reimbursement, including twice as much reimbursement to PBM-owned pharmacies than to independent pharmacies for selected drugs.

Below are a few more recent links regarding PBM issues in the market.

https://www.fox9.com/news/prime-therapeutics-ordered-pay-10-million-price-fixing

https://www.fox9.com/news/prescription-drug-prices-marked-up-high-5000-investigation-finds

Ohio - AG Yost secures $49.1 Million settlement in price-fixing cases involving generic drugs | News from WLIO | hometownstations.com

PBMs are modern-day drug price gangsters and must be held accountable • Ohio Capital Journal

https://www.ajmc.com/view/goodrx-pbms-hit-by-price-fixing-lawsuits

What has happened or is happening in ND related to PBM issues? In 2019, there were a number of discrepancies and questions around Medicaid Expansion being run as managed care by one of the big 3 PBMs. After gathering additional information and verification, the ND Department of HHS turned things over to the Medicaid Fraud Unit. As a result, this legislative assembly decided to remove the PBM from Medicaid Expansion and moved it in-house with traditional Medicaid. The state of ND saved $17 million dollars by removing the PBM from administering the prescription drug benefit for Medicaid Expansion.

Following what happened in ND Medicaid Expansion, this legislative assembly decided to pass a bill to audit the ND Public Employees Retirement System (NDPERS). What happened with that audit? See for yourself. The PBM decided it was not going to cooperate and elected to provide the ND State Auditor with basically no information. I provided the press release from the State Auditor's

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office showing there were 5 findings during the audit. Each of the findings had to do with the PBM refusing to provide the requested and necessary information to complete the audit.

PBM Refuses to Provide Requested Data to State Auditor

Prescription Benefits Manager Optum Rx Refuses to Provide Requested Data to State Auditor's Office | State Auditor's Office

This legislative assembly has passed a number of PBM reform laws of the past decade or so. Those provisions benefit employers, patients, pharmacies, taxpayers and government entities but we have no formal process for accountability, oversight or enforcement in ND. HB 1584 looks to finally hold PBMs accountable in ND.

Section 1 - Page 3 – Lines 11-14

This language establishes the initial application fee for PBMs under the Insurance Commissioner.

Section 2 – Page 3 – Lines 31 through page 4 – Lines 1-7

This language is removed and provides a continued appropriation to the Insurance Commissioner's office. I understand the continued appropriation is not well received and I can appreciate such. I think we can work to address this concern and I hope with the help of this committee we do just that.

Page 4 – Lines 12-23

Definition is changed to address a legal concern and is based off of past court decisions. At the request of both the House and Senate Industry and Business committee Chairs, the former Special Assistant Attorney General for ND testified as to why the changes are needed. Robert Smith was hired by ND to defend the PBM laws this legislative assembly passed in 2017. Mr. Smith and the ND AG's office went all the way to the Supreme Court of the U.S. and prevailed. Mr. Smith has also represented all the major ERISA cases over the past decade including the Rutledge decision versus PCMA (PBMs) in front of the Supreme Court of the U.S, which he also won.

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Page 5 – Lines 9-11

Language is added to include rebate aggregators. What is a rebate aggregator? A rebate aggregator is often owned by the PBM or affiliated with the PBM. Two of the three main rebate aggregators are located outside the United States with one being Ireland and the other in Switzerland. We feel most of the rebate model has shifted in favor of rebate aggregators. If we are asking for information on rebates, it is important to gather information on rebate aggregators since the Big 3 PBMs now own them. Rebate aggregators have a negative effect on the rebates that employer plans should be receiving. Through these overseas companies, PBMs are able to maximize rebate retention for the benefit of the PBM and not the plans or patients. Rebate aggregators retain a portion of the rebate amount as fees. PBMs also reclassify rebates as administrative fees through this process. It is not uncommon to see higher cost drugs with higher rebates prioritized on formularies over better value or lower costs. You will also find contract language that excludes rebates when drugs are filled by a PBM owned pharmacy, mail order or specialty mail order pharmacy.

Plan Sponsor ALERT: Beware of Rebate Aggregators

FTC Expands PBM Investigation to PBM-Owned Rebate Aggregators/GPOs

Language is also added to verify how much of the rebate dollars were retained by the PBM.

Page 5 – Lines 15-16

Since this law was enacted, we have seen a lot of market changes, especially around fees pharmacies pay to PBMs. From 2010 to 2020, PBM fees charged to pharmacies increased 91,000%! That is not a typo. We would like to see other price concessions or financial payments that are paid by the pharmacy to the PBM also be reported.

According to the fiscal year 2022 budget justification (p.242) estimate sent to Congress by CMS, pharmacy DIR fees increased by 91,500 percent between 2010 and 2019. For context, a $4 gallon of milk increased by that much would cost $3,660. (NCPA).

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Page 5 – Lines 30 through page 6 – Lines 1- 7

We support changing the definition of pharmacy benefits manager as amended in the House to reflect a concern brought by some employers. By making this change, we can avoid or lessen concerns around ERISA preemption. This amendment was suggested by Mr. Robert Smith the expert ERISA attorney the State of ND hired to defend our PBM reform laws.

Section 4 – Page 6 – Lines 16-31 and Page 7 – Lines 1-15

This section provides for a formal process for licensing PBMs in North Dakota. This section also establishes the condition, terms, fees and application process to bring oversight under the ND Insurance Commissioner's office. This section was offered by the ND Insurance Commissioner's office as an amendment in the House which the House added to the bill to formalize the process for oversight of PBMs in ND. The ND Insurance Commissioner's office is the best place for authority over PBM practices and is considered a best practice for enforcement of state PBM laws. By having authority under the ND Insurance Commissioner's office, we are able to use the state policing powers and insurance savings clause protections.

Page 7 – Lines 19-22

Twenty years ago, when this law was passed, the "substitution of one prescription drug for another" was really the only other PBM related law under 19-02.1, Since the passage of that law, the ND Legislative Assembly has passed a number of other PBM reforms and they are placed under 19-02.1. HB 1584 would help bring the rest of the PBM laws in 19-02.1 under enforcement of the Insurance Commissioner.

Page 7 – Lines 29-31

HB 1584 adds two more provisions dealing with PBM contracting practices. In recent years, the PBMs have started to offer "silent agreement" contracts. They basically send out a fax or email

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and state "if we do not hear from you in the next 14 days, the pharmacy will automatically agree to the terms and conditions." HB 1584 looks to add language that requires a signature from the pharmacy and PBM before a contract is finalized and agreed upon.

Page 8 – Lines 1-2

HB 1584 also looks to provide the ability of a pharmacy to opt-out of a PBM contract giving a 90-day notice. We are seeing PBMs trying to lock pharmacies into multi-year contracts with no reasonable opt-out structure. PBMs can drop a pharmacy from the network with little to no notice, so we feel it is fair that pharmacies are given a more reasonable way to opt-out of a PBM contract. Providing a 90-day notice should be a reasonable request.

Sections 8 and 9 - Enforcement and Penalties

These sections would establish not only an enforcement pathway but provide some expertise and help to the insurance commissioner's office. There are a number of states that have placed PBM enforcement with their Insurance Commissioner. Maybe I am wrong, but I assume the ND Insurance Commissioner, Board of Pharmacy and ND Health & Human Services could enter into a meaningful agreement(s) to help ease the workload and help provide additional expertise. Depending on what the agreement(s) looks like, the Board of Pharmacy could help with fielding complaints, fact finding, hearings, etc. and then turn things over to the Insurance Commissioner for final review and any potential enforcement. The penalties section is self-explanatory and should help with PBM compliance.

Section 10

This section deals with the proceedings by the commissioner and service of process procedures.

Section 11

This section deals with funding provided by the ND Board of Pharmacy to the Insurance Commissioner's office.

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Section 12

This section repeals a definition and a section of law that deals with the Drug Pricing Fund that was established in 2021 and has been implemented and not needed according to the Insurance Commissioner's office. There is roughly $1.6 million dollars in this fund currently.

Section 13

This section allows the insurance commissioner the ability to hire employees for the implementation of HB 1584. It is time limited and only for the coming biennium. He also can only hire individuals for purposes of enforcing chapter 26. 1-27.1. The commissioner must also report to OMB and legislative council any adjustments made.

Section 14

This provides a transfer of the balance sitting in the drug pricing fund to the insurance regulator trust fund.

In conclusion, HB 1584 (1) cleans up language from twenty years ago, (2) removes language to help withstand legal concerns, (3) adds a couple of PBM reforms laws to address market changes, (4) provides a pathway for enforcement and (5) helps streamline enforcement efforts while attempting to help provide expertise to the Insurance Commissioner's office. We truly hope we can look at how to make this work for the patients, employers, taxpayers and many others in ND.

Thank you for your time and attention today. I am happy to try and answer any questions.

Respectfully Submitted,

Mike Schwab

NDPhA - EVP