



Good afternoon, Chairman Barta and members of the Senate Industry and Business committee. My name is Megan Hruby and I am with Blue Cross Blue Shield of North Dakota (BCBSND.)

BCBSND is here today in opposition of HB 1584 on behalf of our 450,000 members, around 60% of whom are self-funded clients. Self-funded plans are generally made up by the state’s largest employers who choose to self-fund their health plans in an effort to control costs.

As you may have heard me testify before, between 2022 and 2024, BCBSND has spent \$845,233,023.79 on North Dakota State Legislature imposed health insurance mandates. We anticipate that with the addition of the 2025 mandates and Essential Health Benefit additions, that number will be over \$1 billion. This legislative session there have been just under a dozen mandates proposed: infertility, cryopreservation, insulin caps, ground ambulance reimbursement, step therapy bills, copay coupons, dental insurance reform, two different bills to require coverage of GLP-1 medications for weight loss and HB 1584, relative to PBM regulation. Each legislative session we see more, not less, mandates introduced. If all the proposed bills passed due to pressure from advocacy and special interest groups went directly to the commercial market, policyholders would be facing consequences from spur of the moment public policy decisions costing hundreds of millions of dollars, with little or no ability to unwind the impacts.

Self-funded plans are governed by ERISA, and therefore not subject to state health insurance mandates. They get to choose the benefits they offer their employees. (see below SF v FI chart.)

Self-funded vs. fully-insured

| Self-funded | | Fully-insured |
|--|----------------------------|--|
| <p>Employer assumes risk Employer provides health benefits directly to employees</p> | Assumption of Risk | <p>Insurance carrier assumes risk Employer purchases insurance from insurance company</p> |
| <p>Employers have the freedom to choose what they cover</p> | Who Picks Benefits? | <p>Carriers file plans with the DOI and offer to FI clients</p> |
| <p>Employer pays claims Carriers are third party administrator and receive admin fees in exchange for networks, claims processing, etc.</p> | Who Pays? | <p>Employers and individuals pay premium to insurance company and carrier pays claims</p> |
| <p>Governed by federal law (ERISA)</p> | Who Regulates? | <p>Governed by state law and subject to state mandates</p> |

There are several provisions of HB 1584 that are similar to laws regulating PBMs, third party administrators and/or health insurers such as BCBSND in other states that courts have determined are preempted by ERISA. Notably, there are provisions of HB 1584 that mandate pharmacy network and contracting requirements that are similar to the laws successfully challenged in the *Mulready* (10th Circuit) case and certain reporting and disclosure requirements to the laws successfully challenged in the *Gobielle* (2016 US Supreme Court) case. Because these HB 1584 provisions could likewise be determined by a court to be preempted by ERISA, one of our concerns is the taxpayer funded lawsuit aimed at dismantling ERISA pre-emption that is certain to follow passage. Currently, the *Mulready* case previously mentioned is pending hearing at the US Supreme Court. Again, since there are provisions in HB 1584 similar to the laws at issue in *Mulready*, it would be wise to wait until resolution of that case at the US Supreme Court before passing similar legislation in North Dakota.

Our second concern is what this legislation accomplishes for the average North Dakotan. Will passage of this law lower prescription drug costs? That was not one of the arguments made by proponents. In other states where PBM regulation has passed, plans have reported their prescription drug costs increasing rather than decreasing.

Rather, we heard an argument about increasing fees and contract practices for pharmacists. Those things are unfair. But is it the responsibility of the North Dakota taxpayer to fund a premature lawsuit and support legislation to further protect pharmacists? There is no one forcing pharmacists to contract with unfair PBMs. North Dakota already has multiple layers of state mandated protection in place in for our pharmacists including pharmacy ownership laws, any willing pharmacy, mandated 340B pricing with no reporting requirements, and multiple PBM laws that impose several requirements including provisions that limit fees and copayments PBMs may charge, require the use of electronic quality improvement platforms, prohibit gag orders, and require certain disclosures. Is more government regulation the answer right now when we are still waiting for an answer on law passed in 2020?

PBM regulation is a very relevant topic right now, both at the state and federal level. The National Association of Insurance Commissioners (NAIC), National Conference of Insurance Legislators (NCOIL) and multiple other state policy platforms have all been looking at this issue for the last several years. They have taken testimony, worked on model legislation, and lobbied Congress. These groups continue to work through this challenge to come up with a well thought out solution – we urge this committee to let these entities work through the process rather than push through legislation that is likely to put the ND taxpayers in the position of footing the bill for a lawsuit that this legislation is likely to cause without any benefit to them.

With that Chairman Barta, I urge a Do Not Pass on 1584 and will stand for any questions.