

March 10, 2021

The Honorable Bronna Kahle
Chair, House Health Policy Committee
Michigan House of Representatives
124 North Capitol Avenue
Lansing, MI 48933

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT FOR HB 4348

Dear Chair Kahle and members of the House Health Policy Committee:

I am writing to you today on behalf of the National Community Pharmacists Association in support of HB 4348, which would help control drug costs in Michigan, provide greater protections for patients regarding their prescription drug benefits programs, and establish greater oversight of the pharmacy benefit managers that administer those benefits.

NCPA represents the interest of America's community pharmacists, including the owners of more than 21,000 independent community pharmacies across the United States and 1,026 independent community pharmacies in Michigan.

Community pharmacists have long known that opaque pharmacy benefit manager (PBM) practices not only hamper patients' ability to obtain pharmacy services from their trusted community pharmacists, but those practices can also lead to higher drug costs for both patients and plan sponsors. Government officials across the nation who have examined PBM practices share those same concerns. Lawmakers in New York state found that "PBMs often employ controversial utilization and management tools to generate revenue for themselves in a way that is detrimental to health plan sponsors, patients, and pharmacies."¹

HB 4348 would put a stop some of those opaque practices that are threatening patient access to community pharmacy services and raising costs for patients and plan sponsors.

Protecting patient choice from PBM conflicts of interest

HB 4348 contains provisions that would limit PBM self-dealing and ensure a patient's ability to make his or her own healthcare decisions is not superseded by a PBM's conflict of interest. It is not uncommon for a PBM to usurp a patient's authority to make his or her own healthcare decisions by requiring the patient to utilize a PBM-owned pharmacy, often a mail-order pharmacy. The PBM is then free to reimburse its pharmacy at higher rates than other pharmacies, thereby forcing patients and plan sponsors to pay higher costs to the PBM.

Under this bill, a PBM would be prohibited from creating arbitrarily narrow networks and from steering patients to a PBM-owned pharmacy. Additionally, a PBM would no longer be able to reimburse its own pharmacies at higher rates, and all sources of potential PBM conflicts of interest would have to be disclosed to the plan sponsors. These provisions would ensure a patient's choice

¹ New York Senate Committee on Investigations and Government Operations, *Final Investigative Report: Pharmacy Benefit Managers in New York*, (May 31, 2019), available at https://www.nysenate.gov/sites/default/files/article/attachment/final_investigatory_report_pharmacy_benefit_managers_in_new_york.pdf.

of pharmacy is left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest.

Lowering patient out-of-pocket costs

HB 4348 would put a stop some of the opaque practices that are raising patients' out-of-pocket costs. Gag clauses and copay clawbacks have prevented pharmacists from informing patients about lower cost alternatives at the pharmacy counter. By enacting HB 4348, Michigan would join 36 other states that have prevented gag clauses and copay clawbacks, thereby allowing pharmacists to work with patients to make the best, most cost-efficient healthcare decisions for that patient.

HB 4348 would also prohibit retroactive clawbacks that end up increasing out-of-pocket costs for patients. When a PBM has reimbursed a pharmacy for filling a prescription, it is not uncommon for the PBM to claw back a portion of the reimbursement days, weeks, or even months later. However, a patient's cost share amount is tied to the initial reimbursement. Therefore, when there is a retroactive clawback, the true reimbursement amount is lower than the initial reimbursement. This means that a patient's cost share is based on an arbitrarily inflated figure. By prohibiting retroactive active claim reductions, HB 4348 will ensure patients' cost shares reflect the true cost of their health care services.

Addressing pharmacy reimbursement transparency

HB 4348 would address a lack of transparency in pharmacy reimbursement methods that impact both pharmacies and plan sponsors. The bill would ensure that PBM-determined reimbursement amounts are based on the National Average Drug Acquisition Cost, which is an objective benchmark that accurately reflects the true market costs for Michigan pharmacies. It would also require PBMs to establish a process to verify that their "maximum allowable cost" amounts actually reflect true market costs for prescription drugs. This provision could be made stronger by applying it to all reimbursement methods, rather than just "maximum allowable cost" lists, and NCPA urges the committee to make such an amendment to the bill.

The bill's reimbursement transparency provisions also protect payers by prohibiting "spread pricing," in which a PBM reimburses a pharmacy at one price for filling a prescription and charges the plan sponsor a higher price for administering that same prescription. Spread pricing can end up costing plan sponsors millions of dollars in overcharges, as officials in Ohio, Kentucky, and other states have found after investigating the PBMs serving state-funded benefit plans.² Prohibiting this practice can save plan sponsors millions of dollars.

Establishing fair pharmacy audit procedures

Pharmacists understand that audits are a necessary practice to identify fraud, abuse, and wasteful spending, and they are not opposed to appropriate audits to identify such issues. Current PBM audits of pharmacies, however, are often used as an additional revenue source for the PBM. PBMs

² Auditor of State of Ohio, *Auditor's Report: Pharmacy Benefit Managers Take Fees of 31% on Generic Drugs Worth \$208M in One-Year Period*, (Aug. 16, 2018) <https://ohioauditor.gov/news/pressreleases/Details/5042>. Kentucky Department for Medicaid Services, *Medicaid Pharmacy Pricing: Opening the Black Box* 5, 8 (Feb. 19, 2019), https://chfs.ky.gov/agencies/ohda/Documents1/CHFS_Medicaid_Pharmacy_Pricing.pdf.

routinely target community pharmacies and recoup vast sums of money for nothing more than harmless clerical errors where the correct medication was properly dispensed and no financial harm was incurred. In many instances, the PBM not only recoups the money paid to the pharmacy for the claim in question but also recoups for every refill of that claim, even if all other fills were dispensed without error.

Michigan is not alone in recognizing the need to address abusive audit practices. In their 2014 Final Call Letter, the Centers for Medicare and Medicaid Services (CMS) indicated their recognition of abusive audit practices occurring within the Part D program. CMS found that pharmacy audits in the Part D program were not focused on identifying fraud and financial harm but on targeting clerical errors that “may be related to the incentives in contingency reimbursement arrangements with claim audit vendors.”

By enacting HB 4348, Michigan would join 42 other states that have established reasonable standards to ensure that PBM audit abuses are curtailed without undermining the ability to identify fraud or legitimate errors.

Conclusion

HB 4348 would protect patients and pharmacies by putting an end to costly, opaque PBM practices. To protect patient access to vital pharmacy services, I respectfully ask you to support HB 4348. If you have any questions about the information contained in this letter or wish to discuss the issue in greater detail, please do not hesitate to contact me at matthew.magner@ncpa.org.

Sincerely,



Matthew Magner, JD
Director, State Government Affairs