March 2, 2021

The Honorable Matt Williams
Chairperson, Banking, Commerce and Insurance Committee
Nebraska State Capitol
1445 K Street
Lincoln, NE 68508

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT FOR LB 270

Dear Chairperson Williams:

I am writing to you today on behalf of the National Community Pharmacists Association in support of LB 270, also known as the "Pharmacy Benefit Manager Regulation Act." This bill would control drug costs in Nebraska, provide greater protections for patients regarding their prescription drug benefits programs, and establish greater oversight of the pharmacy benefit managers that administer those benefits. I request that this letter be included as part of the committee's public hearing record.

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 176 independent community pharmacies in Nebraska.

Patient access to community pharmacy services has taken a significant hit recently in Nebraska. Since 2010, the number of independent community pharmacies in Nebraska has decreased by 25%.[1] When community pharmacies close, patient health suffers. Research has shown that pharmacy closures "are associated with nonadherence to prescription medications, and declines in adherence are worse in patients using independent pharmacies that subsequently closed."[2]

Community pharmacists have long known that the culprits responsible for the loss of community pharmacies are opaque PBM practices.[3] 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."[4]

LB 270 would put a stop some of those opaque practices that are threating patient access to community pharmacy services and raising costs for patients and plan sponsors.

[1] *See NCPA Annual Digest*, 2011.
[2] Jenny S. Guadamuz, G. Caleb Alexander, Shannon N. Zenk & Dima M. Qato, *Assessment of Pharmacy Closures in the United States From 2009 Through 2015*, JAMA Internal Medicine, Oct. 21, 2019, www.jamainternalmedicine.com.
[3] *See* Abiodun Salako, Fred Ullrich & Keith Mueller, *Update: Independently Owned Pharmacy Closures in Rural America, 2003-2018*, RUPRI Center for Rural Health Policy Analysis, July 2018, Rural Policy Brief No. 2018-2, *available at* https://rupri.public-health.uiowa.edu/publications/policybriefs/2018/2018%20Pharmacy%20Closures.pdf.
[4] 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.

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Protecting patient choice from PBM conflicts of interest

LB 270 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 remove a patient's authority to make his or her own healthcare decisions by requiring that 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 the bill, a PBM would be prohibited from steering a patient to a pharmacy owned by the PBM, and a PBM would no longer be able to reimburse its own pharmacies at higher rates. These provisions would ensure a patient's choice 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.

Controlling patients' costs

LB 270 contains several provisions that would prohibit PBM practices that increase patients' out-of-pocket costs. Gag clauses and copay clawbacks have prevented pharmacists from informing patients about lower cost alternatives at the pharmacy counter. This bill would prohibit these practices and allow pharmacists to work with patients to make the best, most cost-efficient healthcare decisions for that patient.

LB 270 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. They are done under the guise of opaque "adjudication fees" or retroactive claim adjustments. However, these retroactive clawbacks do not go back to the patient to offset the initial out-of-pocket costs. This means that a patient's cost share is based on an arbitrarily inflated figure. By prohibiting retroactive active claim reductions, LB 270 will ensure patients' cost shares reflect the true cost of their healthcare services.

Protecting taxpayer dollars by auditing PBMs in the Medicaid program

Opaque PBM practices have contributed to ever-increasing Medicaid prescription drug costs, as many states have found when they investigate their PBMs. In Ohio, the state Auditor found that, of the $2.5 billion that's spent annually through PBMs on Medicaid prescription drugs, PBMs pocketed $224.8 million through the use of spread pricing alone during a one-year period.[5] In Pennsylvania, between 2013 and 2017, the amount that taxpayers paid to PBMs for Medicaid enrollees more than doubled from $1.41 billion to $2.86 billion.[6] In response to a state report that found state PBMs keep $123.5 million in spread pricing annually, Kentucky's Attorney General

[5] 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.

[6] Pennsylvania Auditor General, *Bringing Transparency & Accountability to Drug Pricing* 6 (Dec. 11, 2018), *available at* https://www.paauditor.gov/Media/Default/Reports/RPT_PBMs_FINAL.pdf.

launched an investigation into allegations that the PBMs have overcharged the state and discriminated against independent pharmacies.[7]

States are realizing that opaque PBM practices come with significant costs, and they are working to contain those costs. LB 270 would bring transparency and accountability to drug pricing in Nebraska by requiring an audit of the PBMs in the state's Medicaid managed care program. We are confident that your efforts will save taxpayer dollars and allow Nebraska's pharmacists to continue serving the members of your communities.

Conclusion

LB 270 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 LB 270. 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

[7] 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. Kentucky Attorney General, *Beshear Launches Investigation into Inflated Prescription Drug Prices*, (Mar. 21, 2019), https://kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=739.