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 375

Dear Chairperson Williams:

I am writing to you today on behalf of the National Community Pharmacists Association in support of LB 375, also known as the "Pharmacy Benefit Manager Regulation and Transparency 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 375 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 375 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 creating narrow networks by arbitrarily keeping pharmacies out of provider networks. Additionally, 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.

Addressing pharmacy reimbursement transparency

LB 375 would address a lack of transparency in pharmacy reimbursement methods, the impact of which has been severe. A study by the Rural Policy Research Institute found that under-reimbursements led to the closure of 1,231 independent pharmacies in rural areas between 2003 and 2018. As a result, 630 rural communities nationwide that had at least one retail pharmacy in 2003 had **zero** retail pharmacies in 2018.[5] The situation is no better in urban areas; between 2009 and 2015, 1 in 8 pharmacies closed as a result of under reimbursements, disproportionately affecting independent pharmacies and low-income neighborhoods.[6]

LB 375 would bring some transparency to PBM reimbursement practices, thereby protecting patient access to community pharmacy services. The bill would ensure that PBM-determined reimbursement amounts accurately reflect the true market costs for Nebraska pharmacies, and it would protect pharmacies from being forced to accept under-reimbursements that have led to so many pharmacy closures in Nebraska and across the nation.

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 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.

Nebraska 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

[5] 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.

[6] 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.

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 LB 375, Nebraska 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

LB 375 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 375. 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