

November 12, 2021

The Honorable Sue Wilson
The Honorable Fred Baldwin
Chairs, Joint Labor, Health & Social Services Committee
200 West 24th Street
Cheyenne, WY 82002

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION COMMENTS ON 22LSO 0147.5

Dear Chair Wilson, Chair Baldwin, and members of the Labor, Health & Social Services Committee:

I am writing to you today on behalf of the National Community Pharmacists Association to provide comments on 22LSO 0147.5, which would help control drug costs in Wyoming, 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 19,400 independent community pharmacies across the United States and 47 independent community pharmacies in Wyoming.

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 This bill would address those practices that can be a barrier to lower costs and better patient outcomes.

Protecting patient choice from PBM conflicts of interest

The draft language 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that would limit PBM self-dealing and ensure a patient's ability to make his or her own healthcare decisions is not superseded by a PBM's conflict of interest.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 through the use of coercive copays and other financial penalties. 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

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.

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

This language would put a stop some of the opaque practices that are raising patients' out-of-pocket costs. It would 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, this language will ensure patients' cost shares reflect the true cost of their health care services.

Addressing pharmacy reimbursement transparency

The bill 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 Wyoming pharmacies. It would also require PBMs to establish a process to verify that their reimbursement amounts actually reflect true market costs for prescription drugs, regardless of the reimbursement methodology. One issue that should be addressed is the language addressing the dispensing fee, which currently references the "national dispensing fee average." That term is not defined in the bill and is subject to misinterpretation. We recommend that the language reference the professional dispensing fee that applies in the Medicaid fee-for-service program, which is evidence-based and reflects the true costs for Wyoming pharmacies.

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.

Strengthening 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

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.

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.

This bill would ensure that PBM audit abuses are curtailed without undermining the ability to identify fraud or legitimate errors.

Conclusion

This bill 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 the language of this bill. 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,

A handwritten signature in cursive script that reads "Matthew Magner".

Matthew Magner, JD
Director, State Government Affairs