

February 16, 2022

The Honorable Wayne Steinhauer
Chair, Senate Health and Human Services Policy Committee
South Dakota Senate
500 East Capitol Street
Pierre, South Dakota 57501

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT FOR SB 163

Good morning, Mr. Chairman and Members of Senate Health and Human Services Committee. My name is Anne Cassity, Vice President of State and Federal Government Affairs for the National Community Pharmacists Association, and I would like to thank you for giving me the opportunity to speak on behalf of NCPA in support of SB 163. This bill will bring transparency to prescription drug benefit programs and protect patient access to community pharmacy services in South Dakota. 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 including independent community pharmacies in South Dakota.

These South Dakota pharmacies filled over 4.5 million prescriptions last year, impacting the lives of thousands of patients in your state. SB 163 would address a lack of transparency and conflicts of interests in pharmacy benefit programs that have had a severe impact on patient access to pharmacy services across the nation. 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. Patient access and patient health should always be the main focus and ensuring the viability of community pharmacies helps meet that goal. The provisions in SB 163, all of which are identical or similar to provisions that have been successfully implemented in other states, would address the issues that are causing these pharmacy closures and threatening patient access.

Specifically, I would like to focus on three provisions in the bill of which the state has clear regulatory authority over most health plans participating in South Dakota, including ERISA plans—those created by the Employee Retirement Income Security Act. In recent Court decisions, both the United State Supreme Court and the Eighth Circuit Court of Appeals, of which South Dakota is a part, have held there is no federal preemption of state law when it comes to state oversight of PBM rates or pricing.

First, Section 8 which prohibits PBMs from reimbursing non-affiliated pharmacies less than they reimburse their own affiliate pharmacies. This provision would limit PBM self-dealing and remove any conflicts of interest. When a PBM is free to reimburse its pharmacy at higher rates than other pharmacies this forces patients and plan sponsors to pay higher costs to the PBM. Under the bill, a PBM would no longer be able to reimburse its own pharmacies at higher rates. Tennessee and Louisiana have similar laws that went into effect in 2019. They both saw a drop

in premiums from 2019 to 2020. To date, 11 states have passed legislation protecting patients, employers and pharmacies from this conflict of interest.

Second, Section 9 which allows a pharmacy to decline to dispense if the PBM reimbursement or payment is below the pharmacy's acquisition cost. This is an important provision as most PBM contracts prohibit a pharmacy from declining to dispense and the penalty would be exclusion from the network, thus potentially losing a large number of their patients. Community pharmacies want to serve to their patients and many times they do at their own expense. This provision will allow pharmacists to protect themselves from the systemic under-reimbursements that have led to so many pharmacy closures nationwide so that they can continue serving patients and from being penalized by a PBM should they need to make this decision. To date, 4 states have passed legislation protecting pharmacies from PBM under-reimbursements.

Third, Section 10 would prohibit PBM imposed fees and retroactive claim adjustment or "clawbacks." These retroactive clawbacks increase 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 is not similarly retroactively adjusted. This means that a patient's cost share is based on an arbitrarily inflated figure. Additionally, these clawbacks put a heavy burden on pharmacies due to the uncertainty of these fees. It's very difficult to run a business when you have little budget predictability. SB 163 will ensure patients' cost shares more accurately reflect the true cost of their health care services and provide more predictability for pharmacy payments. To date, 21 states have passed legislation to protect patients and pharmacies from opaque fees and retroactive clawbacks.

Thank you for the opportunity to speak in favor of SB 163 and the positive impact it will have on patients and pharmacies in South Dakota. I would be happy to answer any questions.

Anne Cassity

National Community Pharmacists Association