

March 17, 2023

The Honorable Lindsey Daugherty
Chair, House Committee on Health and Insurance
200 E. Colfax, Room 307
Denver, CO 80203

Dear Chair Daugherty and Members of the Committee,

I am writing to you today on behalf of the National Community Pharmacists Association (NCPA) in support of HB 23-1201, which would help control drug costs in Colorado, provide transparency for patients and employers regarding their prescription drug benefits programs, and establish greater oversight of the pharmacy benefit managers (PBMs) 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 123 independent community pharmacies in Colorado. These pharmacies employed more than 1,500 residents and they filled approximately 7.75 million prescriptions in 2021, generating more than \$327 million in sales.

Community pharmacists have long known that opaque 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. Due to the massive consolidation and vertical integration in the health insurance market¹, the three largest PBM's control 80% of the prescription drug market² giving them the power to engage in abusive practices which limit patient access, increase drug costs and threaten the viability of small business pharmacies.

Given the above concerns, NCPA strongly supports the bill's oversight provisions under the auspices of the Insurance Commissioner. We appreciate the amended bill language to simplify the oversight to one agency. While we supported the original bill's language creating authority for the Attorney General to request an audit of PBMs, we applaud audit authority being given to the Insurance Commissioner.

NCPA also supports the bill's proposal to create a pass-through pricing model as a means to avoid spread pricing, an egregious practice of PBMs that cost taxpayers, employers, and patients significantly. Arkansas, Georgia, Kentucky, Louisiana, Maryland, New Hampshire, New York, Ohio,

¹ <https://ncpa.org/sites/default/files/2023-01/verical-bus-chart.jpg>

² [Drug Channels: The Top Pharmacy Benefit Managers of 2021: The Big Get Even Bigger](#)

Pennsylvania, and Virginia do not allow managed care companies or PBMs to engage in spread pricing.

NCPA strongly supported the original bill's language making sensible regulation applicable to all PBMs, including those otherwise governed by the Employee Retirement Income Security Act of 1974 (ERISA). Accordingly, we are disappointed with the amended provisions making oversight something a PBM can choose (and likely opt out of). While we are pleased the legislation acknowledges the appropriateness of regulating ERISA plans per *Rutlege v. PCMA*, having differing tiers of oversight and enforcement is not helpful. As analyzed by legislative staff in the State of Maryland recently, "Small business pharmacies benefit from having State law protections in additional areas of the self-funded market and increased uniformity in the regulatory framework for PBMs."³ We urge uniform oversight of all PBMs in the future.

In conclusion, NCPA encourages the Committee to advance HB 23-1201. We appreciate the leadership of Chair Daugherty and Representative Soper as prime sponsors on this important issue. Thank you for receiving our perspective. Please do not hesitate to contact me any time at (703) 600-1186 or joel.kurzman@ncpa.org.

Sincerely,

A handwritten signature in black ink that reads "Joel Kurzman". The signature is written in a cursive style and is centered within a light gray rectangular box.

Joel Kurzman
Director, State Government Affairs

³ https://mgaleg.maryland.gov/2023RS/fnotes/bil_0007/hb0357.pdf