

April 25, 2023

The Honorable Kevin Hardee
Chair, Insurance Subcommittee
404C Blatt Building
Columbia, South Carolina 29201

Dear Chair Hardee and Members of the Subcommittee,

I am writing on behalf of the National Community Pharmacists Association (NCPA) in support of S. 520, which would help control drug costs in South Carolina, 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 nearly 600 independent community pharmacies in South Carolina. These pharmacies employed more than 7,300 residents and they filled nearly 38 million prescriptions in 2021.

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.

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.

South Carolina 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 of abusive audit practices occurring within the Part D program. CMS found that pharmacy audits in the Part D

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](#)

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.”³ To address these concerns, NCPA appreciates the clear timelines and external review processes laid out in S. 520, as well as limiting the number of audits unless there is fraud or misrepresentation suspected. Meanwhile, we also support the requirement of biannual audits of Medicaid managed care companies’ pharmacy pricing.

S. 520 would also prohibit retroactive fees 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, and often under the guise of effective rate reconciliations or “transaction fees.” 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. By prohibiting retroactive claim reductions, S. 520 will ensure patients’ cost shares more accurately reflect the true cost of their health care services.

S. 520 also contains important provisions that protect patient choice, empowering patients to make their own healthcare decisions free from a PBM’s conflict of interest. It is not uncommon for a PBM to require patients to utilize a PBM-owned or affiliated pharmacy, often a mail-order pharmacy. The PBM is then free to reimburse its pharmacy at higher rates, thereby forcing patients and plan sponsors to pay higher costs to the PBM. S. 520 prohibits PBMs from steering a patient to a PBM-owned or affiliated pharmacy, preventing the PBM from charging artificially higher rates. These provisions ensure a patient can choose a pharmacy that’s in the patient’s best interest, not just what’s in the PBM’s best interest.

We urge you to advance this critical legislation. We wish to thank Senators Setzler and Cromer for their leadership on the bill. If you have any questions, please do not hesitate to contact me 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 positioned above a thin horizontal line.

Joel Kurzman
Director, State Government Affairs

³ <https://www.cms.gov/medicare/health-plans/medicareadvtspeccratestats/downloads/announcement2014.pdf>