

December 5, 2023

The Honorable Mary Felzkowski
Chair, Senate Committee on Insurance and Small Business
Room 415 South
State Capitol
PO Box 7882
Madison, WI 53707

Dear Chair Felzkowski Members of the Committee:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in support SB 737, which would help control drug costs in Wisconsin, 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 255 independent community pharmacies in Wisconsin. These pharmacies employed more than 3,137 residents and they filled nearly 16 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.

NCPA strongly supports the bill's 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. The bill's provisions will diminish the likelihood of PBMs steering a patient to a PBM-owned or affiliated pharmacy or mail order, 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. Because the bill requires PBMs to make network access available to pharmacies only if they meet the same terms and conditions as PBM-affiliated pharmacies, there is assurance against the type of rising costs that opponents of the bill falsely suggest.

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](#)

We appreciate the bill's protections against under-reimbursement to pharmacies. We support the bill's comprehensive provisions for establishing an administrative appeals process. It is excellent policy to have instances of corrected underpayment apply to all similarly situated pharmacists and pharmacies subject to the same applicable pricing information. We support the provision giving the pharmacist the right to decline to dispense when faced with below-cost reimbursement. We commend the author for these provisions.

NCPA strongly supports using a transparent reimbursement pricing model using cost-based reimbursement methodology as proposed in the bill. This is not a novel approach as both the states of West Virginia³ and Tennessee⁴ have enacted similar provisions. This transparent reimbursement approach will ensure that both the insured and plan sponsor know how their money will be spent. We support the proposal's use of transparent benchmarks such as the national drug acquisition cost (NADAC), which is updated on a weekly basis. We similarly support use of a regularly updated dispensing fee based on pharmacies' cost to dispense using the Centers for Medicare and Medicaid Services (CMS)-approved figure.

The bill 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 fees and retroactive claim reductions, the bill will ensure patients' cost shares more accurately reflect the true cost of their health care services.

We also support the prohibition on accreditation standards and quality programs, which are often applied arbitrarily in PBM contracts. State boards of pharmacy are charged with protecting the health and well-being of the citizens in their state. When PBMs start making decisions regarding who can practice and how they can practice, they are stepping into the domain of the state board of pharmacy and restricting access to otherwise qualified pharmacists. This has negative consequences on patient access to care and patient choice.

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.

³ [West Virginia Code 33-51-9 \(e\)](#)

⁴ [Tennessee Code 56-7-3206 \(c\)\(1\) and \(f\)](#)

If NCPA has any constructive criticism to the bill, it would be to point out that the legislation has no terms for enforcement. States are increasingly authorizing stronger enforcement and oversight to the Office of the Insurance Commissioner, providing a range of tools such as authority to issue fines, to audit PBMs, and to potentially bar PBMs from doing business in the state after multiple violations. NCPA strongly encourages the addition of these provisions to the bill, offering Florida's SB 1550 from 2023 as a potential model.⁵

In closing, NCPA strongly supports this legislation and thanks Senator Felzkowski and Representative Schraa for their leadership on the bill. Thank you for receiving our perspective. 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 with a large initial "J".

Joel Kurzman
Director, State Government Affairs

⁵ <https://www.flsenate.gov/Session/Bill/2023/1550/BillText/er/HTML>