

March 6, 2024

The Honorable Corlie Ellis
Chair, House Insurance Committee
11 South Union Street, Suite 404
Montgomery, AL 36130

Dear Chair Ellis and Members of the Committee:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in support HB 238, legislation to help control drug costs in Alabama, 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 approximately 493 independent community pharmacies in Alabama. These pharmacies employed more than 5,800 residents and they filled over 32.5 million prescriptions in 2022.

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 supports HB 238's prohibition of spread pricing because it will improve transparency. 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.³ This critical transparency provision will ensure payers' and patients' health care dollars are actually going towards their care, instead of into PBMs' pockets. If such transparent

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](#)

³ 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

reimbursement methodologies were adopted nationwide, federal Medicaid spending would drop by almost \$1 billion over 10 years.⁴

Similarly, NCPA strongly supports using transparent cost-based pharmacy reimbursement methodologies as proposed in the bill. This is not a novel approach as both the states of West Virginia⁵ and Tennessee⁶ 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 actual acquisition cost. 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. Anything less than cost-based reimbursement is asking small business pharmacy owners to subsidize the PBMs and payers, who are Fortune 10 companies.

NCPA appreciates the bill's further interest to protect pharmacies against under-reimbursement and respectfully offers recommendations to strengthen the bill's intent. We support creating the opportunity for PBMs to establish an appeals process. However, NCPA respectfully recommends making that provision a requirement, just as we see in many other states. We also recommend assigning authority to the Office of the Insurance Commissioner to enforce those reimbursement provisions and, either in legislation or in rule, establishing a fine structure for under-reimbursement violations as implemented in West Virginia.⁷ As it relates to the Insurance Commissioner in the current bill language, NCPA supports the additional detail given to the Commissioner's authority to examine PBMs. Our only recommendation is to follow Florida's example by adding language to require biennial examinations.⁸

We commend the bill for revisiting audit protections for 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. However, too often PBM audits of pharmacies are 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

⁴ <https://www.finance.senate.gov/imo/media/doc/2020-03-13%20PDRA-SFC%20CBO%20Table.pdf>

⁵ [West Virginia Code 33-51-9](#) (e)

⁶ [Tennessee Code 56-7-3206\(c\)\(1\) and \(f\)](#)

⁷ [West Virginia Code 33-51-9](#) (e)

⁸ <https://laws.flrules.org/2023/29>

question but also recoups for every refill of that claim, even if all other fills were dispensed without error.

In closing, NCPA strongly supports HB 238 and thanks Representative Rigsby for his 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" and a long, sweeping underline.

Joel Kurzman
Director, State Government Affairs