

April 1, 2024

The Honorable Andy Beshear
Governor, Commonwealth of Kentucky
700 Capitol Avenue
Suite 100
Frankfort, KY 40601

Dear Governor Beshear:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in support of SB 188, which would help control drug costs in Kentucky, provide transparency for patients, employers, and the Commonwealth regarding their prescription drug benefits programs, and establish greater oversight of the pharmacy benefit managers (PBMs) that administer those benefits. As you know from your participation at the White House round table discussion last month, the situation for independent pharmacies is dire. As such, we urge you to sign SB 188 into law.

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 475 independent community pharmacies in Kentucky. These pharmacies employed nearly 5,700 residents and they filled over 31.4 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 strongly supports the bill's use of a transparent cost-based reimbursement floor. We support the use the National Drug Average Acquisition Cost benchmark (NADAC), an objective, evidence-based drug pricing benchmark updated on a monthly basis. By tying the drug ingredient costs to NADAC, the bill ensures plan sponsors and payers have more information about how their money is being used by their PBMs, avoiding spread pricing. NCPA also supports the use of a minimum \$10.64 professional dispensing for retail independent pharmacies. We encourage regular cost of dispensing surveys to ensure this figure remains reflective of a retail independent pharmacy's cost to dispense.

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 applaud the new language created in Section 14 to apply these transparent cost-based reimbursement policies to plans offered, issued, or renewed to public employees. With the recent enactment of SB 453, West Virginia recognized how its state employee plans were overpaying for drugs, regularly reimbursing chain pharmacies more than independents for the same product.³ With other states now pursuing these state employee plan policies, NCPA strongly supports this Section of SB 188.

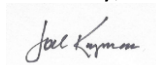
SB 188 would also prohibit retroactive fees that end up increasing out-of-pocket costs for patients. When a PBM has reimbursed a pharmacy for filling a prescription, it is not uncommon for the PBM to claw back a portion of the reimbursement days, weeks, or even months later, and often under the guise 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, SB 188 will ensure patients’ cost shares more accurately reflect the true cost of their health care services.

SB 188 also contains important network adequacy provisions that protect patient access, 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. SB 188 wisely seeks to prevent PBMs from reimbursing its owned or affiliated pharmacies more than other pharmacies. It also prohibits PBMs from steering a patient to a PBM-owned or affiliated pharmacy, preventing the PBM from charging artificially higher rates. These provisions help 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.

Finally, NCPA appreciates the authority granted to the Office of the Insurance Commissioner to enforce the law in collaboration with the Board of Pharmacy. Too often we see PBMs flouting laws without repercussion. We look forward to a robust rule-making process that ensures proper implementation of this excellent legislation.

Thank you for receiving our perspective. We urge you to sign SB 188 into law. If you have any questions, please do not hesitate to contact me at (703) 600-1186 or joel.kurzman@ncpa.org.

Sincerely,



Joel Kurzman
Director, State Government Affairs

³ <https://www.wowktv.com/news/west-virginia/more-outrage-over-peia-drug-payments-reimbursement-rates/>