

February 17, 2020

The Honorable Jene Vickrey
Chair, House Insurance Committee
Kansas State Capitol
SW 8th Ave. and SW Van Buren St.
Topeka, KS 66612

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT OF HB 2598

Dear Chair Vickrey, Vice-Chair Cox, Ranking Minority Member Neighbor, and members of the House Insurance Committee,

I am writing to you today on behalf of the National Community Pharmacists Association in support of House Bill 2598, which would control drug costs in Kansas, provide greater protections for patients regarding their prescription drug benefits programs, and establish greater oversight of the pharmacy benefit managers that administer those benefits.

NCPA represents the interest of America's community pharmacists, including the owners of more than 21,700 independent community pharmacies across the United States and 249 independent community pharmacies in Kansas.

Patient access to community pharmacy services has taken a significant hit recently in Kansas. Since 2007, the number of independent community pharmacies has decreased by 18%.¹ When community pharmacies close, patient health suffers. Research published in a publication of the Journal of the American Medical Association has shown that pharmacy closures "are associated with nonadherence to prescription medications, and declines in adherence are worse in patients using independent pharmacies that subsequently closed."²

Community pharmacists have long known that the culprits responsible for the loss of community pharmacies are opaque PBM practices.³ Government officials across the nation who have examined PBM practices share those same concerns. For example, the New York Senate Committee on Investigations & Government Operations found that "PBMs often employ controversial utilization and management tools to generate revenue for themselves in a way that is detrimental to health plan sponsors, patients, and pharmacies."⁴

¹ See *NCPA Annual Digest*, 2008.

² Jenny S. Guadamuz, G. Caleb Alexander, Shannon N. Zenk & Dima M. Qato, *Assessment of Pharmacy Closures in the United States From 2009 Through 2015*, *JAMA Internal Medicine*, Oct. 21, 2019, www.jamainternalmedicine.com.

³ See Abiodun Salako, Fred Ullrich & Keith Mueller, *Update: Independently Owned Pharmacy Closures in Rural America, 2003-2018*, RUPRI Center for Rural Health Policy Analysis, July 2018, Rural Policy Brief No. 2018-2, available at <https://rupri.public-health.uiowa.edu/publications/policybriefs/2018/2018%20Pharmacy%20Closures.pdf>.

⁴ New York Senate Committee on Investigations and Government Operations, *Final Investigative Report: Pharmacy Benefit Managers in New York*, (May 31, 2019), available at https://www.nysenate.gov/sites/default/files/article/attachment/final_investigatory_report_pharmacy_benefit_managers_in_new_york.pdf.

HB 2598 would put a stop some of those opaque practices that are threatening patient access to community pharmacy services and raising costs for patients and plan sponsors.

Bringing transparency to prescription drug costs

HB 2598 would bring transparency to patients' and plan sponsors' prescription drug costs. A common, yet little known, PBM practice that drives up drug costs for plan sponsors and patients is known as spread pricing. Under spread pricing, a PBM will reimburse a pharmacy at one rate for filling a prescription, and charge the plan sponsor a different, higher rate for administering the claim. The PBM pockets the difference, known as the "spread." While addressing the use of spread pricing in the Medicaid program, CMS Administrator Seema Verma expressed "I am concerned that spread pricing is inflating prescription drug costs that are borne by beneficiaries and by taxpayers."⁵

This bill would protect patients and plan sponsors from this costly practice by not only prohibiting the use of spread pricing, but also by ensuring pharmacy reimbursement rates are transparent. Under the bill, what a PBM reimburses a pharmacy must be based on the national average drug acquisition cost, or NADAC, plus a professional dispensing fee. NADAC is "a simple average of the drug acquisition costs submitted by retail community pharmacies."⁶ The professional dispensing fee is established by the state and is supported by Kansas-specific data.⁷ These two benchmarks are evidence-based and accurately reflect a pharmacy's true cost of dispensing a drug. By prohibiting spread pricing and basing pharmacy reimbursements on NADAC plus the state-established professional dispensing fee, this bill will allow plan sponsors and patients to rest assured that the amount they are paying for their medications is an accurate reflection of the true cost of those drugs.

Protecting patient choice from PBM conflicts of interest

HB 2598 contains provisions that would limit PBM self-dealing and ensure a patient's ability to make his or her own healthcare decisions is not superseded by a PBM's conflict of interest. It is not uncommon for a PBM to remove a patient's authority to make his or her own healthcare decisions by requiring that patient to utilize a PBM-owned pharmacy, often a mail-order pharmacy. The PBM is then free to reimburse its pharmacy at higher rates than other pharmacies, thereby forcing patients and plan sponsors to pay higher costs to the PBM. Under the bill, patients would have access to an adequate network of pharmacy providers, a PBM would be prohibited from requiring a patient to use a pharmacy owned by the PBM, and a PBM would no longer be able to reimburse its own pharmacies at higher rates. These provisions would ensure a patient's choice of pharmacy is left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest.

⁵ *CMS Issues New Guidance Addressing Spread Pricing in Medicaid, Ensures Pharmacy Benefit Managers are not Up-Charging Taxpayers*, (May 15, 2019), available at <https://www.cms.gov/newsroom/press-releases/cms-issues-new-guidance-addressing-spread-pricing-medicaid-ensures-pharmacy-benefit-managers-are-not>.

⁶ Ctrs. for Medicare & Medicaid Servs., *Methodology for Calculating the National Average Drug Acquisition Cost (NADAC) for Medicaid Covered Outpatient Drugs* 15 (Nov. 2013).

⁷ See 42 C.F.R. 447.518(d).

This bill would also limit a PBM's authority to establish arbitrary pharmacy accreditation requirements as a condition of network participation. PBMs have no place interfering in the regulatory aspect of pharmacists and pharmacies operating in the state. The Kansas Board of Pharmacy already has the necessary credentialing, accreditation, and licensing requirements for pharmacies in place to serve and protect the residents of Kansas. Additional accreditation and certification requirements implemented by PBMs beyond those mandated by the state are beyond the scope of appropriate PBM practices and serve to limit patient access to trusted pharmacies by creating arbitrarily narrow provider networks.

Controlling patients' costs

HB 2598 contains several provisions that would prohibit PBM practices that increase patients' out-of-pocket costs. Those provisions would prohibit retroactive claim reductions and adjudication fees. 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. They are done under the guise of opaque "adjudication fees" or retroactive claim adjustments. However, a patient's cost share amount is tied to the initial reimbursement. Therefore, when there is a retroactive clawback, the true reimbursement amount is lower than the initial reimbursement. This means that a patient's cost share is based on an arbitrarily inflated figure. An analysis of similar retroactive fees in the Medicare Part D program found PBMs "pocket an excess amount of pharmacy DIR fees rather than offset prescription costs for seniors."⁸ HB 2598 would address retroactive pharmacy reimbursements, thus ensuring patients' costs reflect the true cost of their healthcare services.

Conclusion

HB 2598 would protect patients and pharmacies by putting an end to costly, opaque PBM practices. To protect patient access to vital pharmacy services, I respectfully ask you to support HB 2598. If you have any questions about the information contained in this letter or wish to discuss the issue in greater detail, please do not hesitate to contact me at matthew.magner@ncpanet.org.

Sincerely,



Matthew Magner, JD
Director, State Government Affairs

⁸ Susan L. Lang, *Payers and PBMs Profit From Obscure Pharmacy Fees, While Seniors See No Relief in Prescription Costs*, XIL Consulting, Inc. (Feb. 11, 2020), <https://www.xilangconsulting.com/post/policy-alert>.