



Chairman Bjorkman, Vice Chairman Bishop, and Members of the Committee,

My name is Tonia Neal. I am the Sr. State Director for the Pharmaceutical Care Management Association. The National Trade Association for PBMs.

Below is my prepared testimony for today's hearing.

We oppose SB 121 and urge the Committee to reconsider the measures that would result in increased costs for all stakeholders utilizing Pharmacy Benefit Managers (PBMs) services.

### **Key Points of Concern:**

**Previous Misrepresentations:** Presentations from the February 27<sup>th</sup> Senate Committee hearing shared incorrect facts that require correction.

- **PBM Regulation:** It's crucial to note that PBMs are under strict regulation by U.S. federal and state agencies, with stringent drug reporting requirements.
  - PBMs are subject to detailed drug reporting requirements by the U.S. Departments of Health and Human Services (HHS), Labor (DOL), the Treasury, and the Office of Personnel Management (OPM)
  - Additionally, PBMs' operational specifics are available to plan enrollees through other provisions of the Patient Protection and Affordable Care Act (ACA).
- **Drug Pricing and Access:** Contrary to some claims, PBMs don't single-handedly set drug prices or patient out-of-pocket expenses. A PBMs role is to negotiate on behalf of their clients to secure lower drug prices. Typically, this leads to over \$1,000 in annual savings for individuals; and to provide additional services.
- **FTC's "Investigation":** Regarding the Federal Trade Commission (FTC) allegation of an Investigation of PBMs. The FTC is studying the PBM industry. Just as it has many other industries. The industry is working with the FTC.
- **Legislative Impact:** Despite considerable PBM legislation passed and in effect since 2012 nationally and especially in the past five years in Alaska, prescription

drug prices continue to increase. A holistic review of the entire drug supply chain is crucial for meaningful reform.

- **ERISA Preemption:** Legal precedents have long established ERISA's preemption over state laws that influence essential plan benefits. Recent court rulings, including the *Mulready* case, reaffirm this status quo, which has remained unchanged for half a century.
  - ERISA plans are not just Union plans. It is all self-insured plans.
  - In the *PCMA v Mulready* case, PCMA challenged an Oklahoma law that regulated PBMs in various ways. There is nothing new about the case. Sections of SB 121 step into this space. The decision is attached for your reference.
  - ERISA has always preempted state laws that affect core plan benefit design (like provider networks).
  - Oklahoma's position is extreme – by trying to avoid the direct application of ERISA preemption. The 10th Circuit definitively rejected their arguments.
  - Additionally, you have heard about how the Court demonstrated how its holding aligned with the Supreme Court's decision in *Rutledge v. PCMA*, 141 S. Ct. 474 (2020). *Rutledge* is distinguishable because it dealt with the exceptional case of cost regulations, which are not preempted. They do not interfere with core plan structures (like provider networks).
- **Contract Audits:** Regular audits are an integral part of PBM contracts with plans and pharmacies, ensuring transparency and accountability.

### Potential Consequences of SB 121:

- **Increased Costs:** The adoption of NADAC pricing doesn't accurately reflect pharmacy acquisition costs, does not correspond with real-time market trends, and could inadvertently lead to higher prices for Alaskan patients.
  - NADAC pricing doesn't reflect true net pharmacy acquisition cost.
  - NADAC pricing lags behind real-time market pricing.
  - The reimbursement floors can force insured patients to pay more for drugs.
  - The mandate to change to NADAC will increase costs to Alaskans without a benefit.
- **Mandated Dispensing Fees:** This approach does not address the root issue of manufacturer-imposed high drug costs and will result in elevated prescription drug expenses for Alaskan consumers – effectively taking more money out of their pockets.

## **Reconsidering Fiduciary Expectations**

Fiduciary language does not accurately represent the multifaceted nature of the agreements between PBMs and plan sponsors. It is important to note that:

- PBMs strategically administer prescription drug benefits, aiming to serve the shared interests of both parties involved.
- The imposition of fiduciary duties on PBMs can inadvertently generate a conflict of interest, which could undermine the intention of these partnerships.

## **Potential Impacts on Pharmacy Networks**

SB 121 introduces prohibitions that could dismantle valuable savings mechanisms with unintended consequences:

- Section 11's provisions prevent PBMs on behalf of plans from benefiting from pharmacy networks.
- Such restrictions will limit PBMs' ability on behalf of their clients to negotiate better rates and maintain high standards for quality and service.

This not only impacts cost-containment strategies but also the intricate balance of benefits that plan sponsors rely on.

In consideration of these points, we recommend a cautionary evaluation of SB 121's implications. The proposals that lead to unintended financial burdens on Alaskans. It's imperative to examine each element of the drug supply chain and pursue comprehensive solutions that avoid a disproportionate impact on any single stakeholder, including the citizens of Alaska.

We are poised to engage constructively in conversations about SB 121 and remain a resource to policymakers. Our experience in working with various state legislatures to provide insight and clarity stands a testament to our dedication to an informed legislative process.

We are open to further discussions and ready to address any queries concerning this bill.

Thank you for considering our position.