

In Support of HB 23-1201

Testimony before the Colorado House Health and Insurance Committee

Robert J. Smith, Executive Director, CBGH

March 17th, 2023

Good afternoon Madam Chair and Honorable Committee Members...

I am Robert Smith, Executive Director of the Colorado Business Group on Health – a 501c3 organization comprised of thirteen (13) self-funded employers, two (2) employer trusts representing over 35 smaller Colorado municipalities and school districts, and a Taft-Hartley plan. Thank you for the opportunity to explain to you why the Colorado Business Group on Health supports HB23-1201 prohibiting prescription drug spread pricing.

Employers have reason to support this bill because of its potential to mitigate one of the two more significant supply-side drivers of healthcare cost inflation impacting them, their employees, and our economy: prescription drug prices.

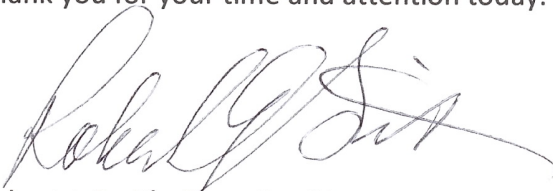
In regard to the bill you are considering, I would point to a December 6, 2022 Reuters report citing that price increases in seven of the ten drugs that drove the greatest increase in spending from the prior year were not supported by clinical evidence or improved efficacy. Nor was there evidence that supply chain or production costs explained the increase. What does explain the increase? Not unlike most inpatient hospital services, for patients with diabetes, arthritis, COPD, or other chronic conditions, these drugs are what both economists and patients alike call “non-discretionary.” Unlike discretionary services such as teeth whitening or tummy tucks, people truly need them to live a better life. And because people need them, suppliers can and - when it comes to the services I just mentioned - evidently do price to whatever the market will bear.

Two facts cited in a **Colorado Health Institute** report last October titled “*A Dose of Reality: Prescription Drugs in Colorado*” highlight the need for additional regulatory control over such non-discretionary services in the marketplace:

- Almost half of all Coloradans need to take at least one prescription medication.
- In 2021, 9.7% of Coloradans were unable to fill a prescription due to the cost. Of those, 40.0% said their health condition worsened as a result.

In short, I would suggest to you today that spread pricing is an opaque and consequently unfair, deceptive practice driving up the costs of prescription drugs at the expense of consumers who have no choice but to pay up – even at the expense of other necessities. As such, I encourage you to support this incremental but important approach to mitigating the costs of healthcare.

Thank you for your time and attention today.



Robert J. Smith, Executive Director
Colorado Business Group on Health



COLORADO
PHARMACISTS
SOCIETY

Colorado Pharmacists Society

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March 17, 2023

Representative Lindsey Daugherty
200 E Colfax RM 307
Denver, CO 80203

Madam Chair Daugherty and Members of the House Health & Insurance
Committee,

The Colorado Pharmacists Society is a 501(c)(3) non-profit member
professional association representing pharmacists, pharmacy technicians
and licensed interns in Colorado. Our members practice in all healthcare
settings in the State.

**This letter is to indicate our strong support of House Bill 23-1201
“Prescription Drug Benefits Contract Term Requirements”.** We
appreciate this cohesive effort to address a large problem in our
healthcare system. CPS has worked hard with legislators and the general
assembly to pass solid Colorado Pharmacy Benefit Manager (PBM) bills
over the years. We appreciate that PBM issues are rising to the top of
the radar in our state, in the United States Congress, and at the Federal
Trade Commission.

Spread pricing is a practice in which the PBM charges the plan sponsor
more than they pay the pharmacy for a medication and keeps the
“spread” as a profit (without providing any additional value or service).
This bill is really about patients, and the healthcare dollar, but also about
pharmacists, employers, pharmacies (both small businesses and big
businesses) and much more.

Our perspective as pharmacy professionals is highlighted in a recent
survey done by the American Pharmacists Association called “Quantifying
the Impact of Pharmacy Benefit Manager Practice”. Importantly, the
pharmacists in this study were from all practice areas, all regions of the
US and had a very diverse graduation year. More than 8 out of 10 (82%)
of the pharmacists agreed that spread pricing impacts their pharmacy
and the patient care they provide. More than 9 out of 10 (92%) of all
respondents strongly agreed that PBM practices are negatively affecting
their practice and their ability to provide patient care. When asked what
policy solutions could alleviate PBM issues, respondents called for
accountability from PBMs first and foremost.

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There is no doubt spread pricing by PBMs drives up the costs of prescription medicines, hurts patients, hurts pharmacies, hurts businesses/employers, and serves no legitimate purpose in the pharmaceutical supply chain, other than to profiteer on the backs of business, patients, and pharmacies.

The CPS membership strongly supports this bill, and we respectfully ask the House Health & Insurance Committee members to vote YES on HB 23-1201.

Sincerely,

Emily Zadvorny, PharmD, BCPS

Executive Director, Colorado Pharmacists Society

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March 16, 2023

My name is Dr. Gerard Anderson, and I am a professor at Johns Hopkins University with appointments in the Schools of Medicine and Public Health. I run large research teams looking at drug pricing sponsored by private foundations. We do not take any money from drug companies, PBMs or anyone involved in the drug supply chain. I am a member of the Maryland Drug Affordability Board and frequently testify before Congress about drug pricing issues. I am speaking in my capacity as a professor and not as a representative of Johns Hopkins University

PBMs are incredibly profitable, yet they do not develop drugs, manufacture drugs, or dispense drugs. They are the classic middleman - an administrator of the prescription drug benefit, a contracting agent and payer of claims to pharmacies, a creator and keeper of the formulary list.

There are three main PBMs that control 80 percent of the market. In economics, this is considered a classic oligopoly. CVS Caremark, the largest PBM with 34% of the market share, is a component of the drugstore chain CVS. They also own Aetna, a health insurance company. Express Scripts has a 25% market share and it is owned by Cigna, also a health insurance company. Optum, a subsidiary of United Health Care, has a 20% market share.

Prescription drug prices could have come down to the benefit of consumers and employers as a result of these massive mergers and acquisition activities between PBMs and insurance carriers. Instead the mergers and acquisitions are concurrent with increases in PBM/Carrier profits. We wrote a paper in a peer reviewed journal, *Annals of Internal Medicine*, in 2018 trying to estimate the profit margins of the three largest PBMs. We found that the combined operating profits of these 3 PBMs increased from \$3.4 billion in 2007 to \$12.4 billion in 2016. Unfortunately, I do not have more current data, but the trend is clear. These are incredibly profitable entities whose profits keep increasing while costs to employers and consumers are increasing. There are many ways that PBMs earn profits and many of those ways are not transparent.

The legislation being proposed through HB23-1201 tackles one of the most important PBM non-transparent drivers of both profits and rising prescription drug costs to consumers, employers and state Medicaid programs - It's called Spread Pricing. Colorado is a national leader in understanding the complexities of the prescription drug industry and leveraging that knowledge to drive prescription drug affordability policy. As a national expert, I am asking for Colorado's continued leadership in prescription drug affordability to address the problem of Spread Pricing.

Spread Pricing occurs when the PBM pays its contracted pharmacy one price for a drug dispensed to an individual but charges its contracted employer - or its sister health insurance company who provides individual or group insurance policies - a higher amount. Assume the pharmacy is paid \$75 for a drug by the PBM but then turns around and charges the contracted employer - either directly or

through its sister health insurance carrier \$85 for the same drug dispensed to the same person. This is a \$10 profit but the PBM never even took possession of the drug. They simply paid the pharmacy one price and charged the employer a much higher price. In most businesses, an entity buys something from someone and sells it to another person and incurs an expense like transportation. For example, the drug wholesaler takes the drug from the manufacturer and brings it to the pharmacy. For this the wholesaler probably earns a 2% profit. Nothing like this occurs in the case of spread pricing. The PBM was not part of the supply chain. The PBM just leveraged its administrative position as a claims payer to upcharge its employer client or the insurer middleman – the owner of the PBM.

This behavior is bad for insured and self-insured companies that contract with PBMs, so I appreciate the opt in provision. It is critical. Brokers, consultants and employers need this option. Even when the choice is provided to an employer by the PBM or carrier directly, the full financial picture is not provided - there are monies exchanging hands between the insurer and its PBM that are not transparent. This hidden behavior impacts most everyone who deals with PBM including employees and patients. When the PBM engages in Spread Pricing, it increases the cost of the prescription drug benefit, and some or all of those increased costs are passed along to employees and patients in the form of increased out of pocket costs like premium contributions, copays, and deductibles. In many cases the employee will either receive a lower raise or pay a higher premium for their health insurance. Both employers and employees are harmed by spread pricing.

I feel like we are playing the game of “whack a mole” when we deal with the PBMs, but it is a necessary undertaking. Addressing the problem of Spread Pricing will improve the affordability of prescription drug benefits for Coloradans, employers and their employees. Thank you for your consideration.

Gerard F. Anderson

Gerard F. Anderson, PhD

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March 17, 2023

The Honorable Lindsey Daugherty
Chair, House Committee on Health and Insurance
200 E. Colfax, Room 307
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Dear Chair Daugherty and Members of the Committee,

I am writing to you today on behalf of the National Community Pharmacists Association (NCPA) in support of HB 23-1201, which would help control drug costs in Colorado, 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 123 independent community pharmacies in Colorado. These pharmacies employed more than 1,500 residents and they filled approximately 7.75 million prescriptions in 2021, generating more than \$327 million in sales.

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.

Given the above concerns, NCPA strongly supports the bill's oversight provisions under the auspices of the Insurance Commissioner. We appreciate the amended bill language to simplify the oversight to one agency. While we supported the original bill's language creating authority for the Attorney General to request an audit of PBMs, we applaud audit authority being given to the Insurance Commissioner.

NCPA also supports the bill's proposal to create a pass-through pricing model as a means to avoid spread pricing, an egregious practice of PBMs that cost taxpayers, employers, and patients significantly. Arkansas, Georgia, Kentucky, Louisiana, Maryland, New Hampshire, New York, Ohio,

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](#)

Pennsylvania, and Virginia do not allow managed care companies or PBMs to engage in spread pricing.

NCPA strongly supported the original bill's language making sensible regulation applicable to all PBMs, including those otherwise governed by the Employee Retirement Income Security Act of 1974 (ERISA). Accordingly, we are disappointed with the amended provisions making oversight something a PBM can choose (and likely opt out of). While we are pleased the legislation acknowledges the appropriateness of regulating ERISA plans per *Rutlege v. PCMA*, having differing tiers of oversight and enforcement is not helpful. As analyzed by legislative staff in the State of Maryland recently, "Small business pharmacies benefit from having State law protections in additional areas of the self-funded market and increased uniformity in the regulatory framework for PBMs."³ We urge uniform oversight of all PBMs in the future.

In conclusion, NCPA encourages the Committee to advance HB 23-1201. We appreciate the leadership of Chair Daugherty and Representative Soper as prime sponsors on this important issue. Thank you for receiving our perspective. Please do not hesitate to contact me any time 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 and is centered within a light gray rectangular box.

Joel Kurzman
Director, State Government Affairs

³ https://mgaleg.maryland.gov/2023RS/fnotes/bil_0007/hb0357.pdf



March 17, 2023

My name is Nathan Gabhart. I am a pharmacist; past pharmacy owner (15 locations); and current PBM Founder/owner. I have been in the pharmacy industry since 1998 and in the PBM industry since 2006. I have vast experience on both sides, PBM and Pharmacy, as well as in leadership positions having served as President of the Indiana Pharmacists Alliance and the Community Pharmacies of Indiana. I also understand to some degree the challenging position you all are in, since I currently am in my third term (9th year) as County Commissioner of Daviess county, Indiana.

PBMs serve a vital role in our healthcare system, however our industry is easily corruptible due to the opaqueness of our revenue streams. As a pharmacy owner when I began, I saw firsthand how PBMs would reject one drug and require a more expensive drug simply to be paid a fee by the manufacturers. As the greed progressed PBMs began buying the supply chain and got into the pharmacy business. Today PBMs actually own, or are owned by, the very pharmacies they are supposed to be negotiating with on behalf of the client. The state of Colorado's PBMs are no different.

As a pharmacy owner I got sick and tired of being sick and tired. Ironically, my neighbor was a customer of mine and a HR manager at a local company. He brought in his invoices he had received from Express Scripts that listed all of the claims his company was being billed for. I was able to pull all of my checks from Express Scripts and match the claims. The PBM sits in the middle of the client and the pharmacy relationship. The client only knows what the PBM is charging them (today the client rarely receives a detailed claims invoice), and the pharmacy only knows what the PBM is paying them. The client and PBM do not know what each other is billed/paid. At least until 2005, when we were able to show the client being charged \$800 and the pharmacy was paid \$100 for the same claim. "MAC Spread " was not even a phrase in 2005 whenever we first discovered it in Princeton, IN.

In 2007 is when I co-founded our first PBM, and I spun off in 2013 due to the conflict of interest of owning a PBM and pharmacies. I then made a vow to never own a pharmacy while I owned a PBM because the client can never be protected. The PBM is able to hide revenue in the pharmacy claims, which is one reason they can charge their clients a \$0 admin fee yet make over \$180 billion a year. "Fifth grade math and common sense" will tell you this isn't possible.



As a current elected official and PBM owner I would strongly urge you to help bring more transparency to the PBM industry and forbid the use of "MAC Spreads". Please support HB 1201.

Nathan Gabhart RPh
Founder
Daviess County Commissioner

Prescription Drug Spread Pricing Prohibition HB23-1201

Org Testimony

Thank you members of the committee for your time today. My name is Samuel Flores, I use he/him pronouns, and I am a Policy Fellow at Young Invincibles, an organization committed to uplifting young adult voices.

The cost of prescriptions for young adults have continued to rise and is affecting marginalized individuals disproportionately. Even those with health insurance still experience high out of pocket costs. Around 60% of insured young adults rely on employer sponsored health insurance but copays and coinsurance for prescriptions are becoming unaffordable.¹ Spread pricing is contributing to this increase in cost and negatively impacting both employers and consumers.

Healthcare continues to be inaccessible to young adults with many citing cost as their main barrier. Healthcare access is essential for maintaining physical and mental well-being. Without good health, it is difficult to succeed in higher education and the workforce. This bill can give employers the opportunity to use these savings to increase wages and finance benefits which will support these young adult employees. As the cost of healthcare increases, employers should not be spending this unnecessary money on prescriptions to increase profits for PBMs. This bill will also ensure a spread pricing prohibition for Colorado's Medicaid program, ensuring taxpayers are also not paying unnecessarily for costs that are not benefiting the recipients.

This bill will lower costs for young adults who are juggling many other costs and responsibilities in their lives. Young adults and their employers deserve transparency and appropriate prices as cost of living increases in Colorado.

I ask you to vote **yes** today on HB23-1201 so healthcare can become more accessible and transparent for our young adults.

Thank you.

¹<https://statehealthcompare.shadac.org/table/4/health-insurance-coverage-type-by-age#1/13,25,14,21,22,23,24,11,86,8/37/7,8>