WRITTEN TESTIMONY OF DAVID A. BALTO TO MEMBERS OF THE NORTH DAKOTA HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE REGARDING S.B. 2258 AND S.B. 2301

March 20, 2017

David A. Balto
Law Offices of David Balto
1325 G Street, NW
Suite 500
Washington, DC 20005
202-577-5424
david.balto@dcantitrustlaw.com

Members of the House Industry, Business and Labor Committee, thank you for the opportunity to submit testimony on pending legislation S.B. 2258 and S.B. 2301 and the need increase enforcement and regulation with respect to Pharmacy Benefit Managers (PBMs). This testimony documents the compelling need for this legislation to protect consumers and health care providers, and regulate PBMs in North Dakota. As explained in this testimony, the proposed legislation includes policies that are needed to protect consumers and providers from inconsistent and unfair practices by PBMs and provide a more competitive marketplace.

The comments in this testimony are based on 30-plus years of experience as a private sector antitrust attorney and an antitrust enforcer for both the Department of Justice and the Federal Trade Commission ("FTC"). From 1995 to 2001, I served as the Policy Director for the FTC's Bureau of Competition and the attorney advisor to Chairman Robert Pitofsky. At the FTC, I helped direct the first antitrust cases against PBMs. Currently, I work as a public interest antitrust attorney. I have represented consumer groups, health plans, unions, employers, and even PBMs on PBM regulatory and competitive issues. I have testified before Congress, numerous state legislatures and three times before the Department of Labor on PBM regulation, and was an expert witness for the State of Maine on its PBM legislation.[1]

The following testimony explains why the proposed legislation is necessary to protect consumers, health care providers and competition.

I. Background

PBMs increasingly engage in anticompetitive, deceptive or egregious conduct that harms consumers, health plans, and pharmacies alike. In a nutshell, both consumers and pharmacies suffer as consumers are increasingly denied a choice in their level of pharmacy service by PBMs. PBMs exercise their power to restrict consumers to the PBM's own captive mail order and specialty pharmacy operations, reducing choice and quality for many. Consumers and their health plans also suffer when health plans are denied the benefits of the PBMs' services as an honest broker, which drives up drug costs, and ultimately leaves consumers footing the bill for higher premiums.[2]

Why do consumers care about restricted access to pharmacies? Because community pharmacists are the most accessible health care professionals; and in many markets, such as rural markets which are prominent in North Dakota, they may be the only accessible professional. Because community pharmacies provide consumers with valuable clinical services and counseling, often free of charge. Because some pharmacies offer drugs at lower prices than the PBMs. Egregious PBM conduct jeopardizes these types of programs that consumers highly value. As community pharmacies are already economically efficient and operate on very minimal margins, reduced consumer access to these pharmacies would, in the end, likely result

[1] The views expressed herein are my own and do not necessarily represent the views of any individual clients.
[2] Often health plans and large employers are silent on complaining about the PBMs out of fear of retaliation since they must do business with PBMs. In response to criticism during the Express Scripts/Medco merger that employers did not publicly express concern over the merger, Senator Herb Kohl stated that "it is notable that no large employer who privately expressed concerns to us wished to testify at today's hearing, often telling us that they feared retaliation from the large PBMs with whom they must do business." Statement of U.S. Senator Herb Kohl on the Express Scripts/Medco merger (12.6.2011).

in harm to other consumers who rely on these community pharmacies.

Similarly, consumers also care about rising health care costs, including out-of-pocket costs for prescription drugs. PBMs have a profound impact upon drug costs. If PBMs are unregulated they can continue to engage in conduct that is deceptive, anticompetitive, and egregious. For this system to work effectively, PBMs must be free of conflicts of interest that arise from owning their own pharmacies. What health plans and employers are fundamentally purchasing is the services of an "honest broker" to secure the lowest prices and best services from both pharmaceutical manufacturers and from pharmacies. When the PBM is owned by the entity it is supposed to bargain with or has its own mail order operations there is an inherent conflict of interest, which can lead to fraud, deception, anticompetitive conduct, and higher prices. The three major PBMs – Express Scripts, CVS/caremark and Optum Rx -- clearly face that conflict since they own mail order operations, specialty pharmacies, and in the case of CVS Caremark – the second largest retail pharmacy chain and the dominant long-term care pharmacy in the U.S.

In recent years, the major PBMs—including those with a clear conflict of interest in their cross-ownership with pharmacies—have engaged in a variety of anticompetitive and anti-consumer practices.

II. Chronic Anticompetitive and Consumer Protection Problems in the PBM Market

PBMs are like other healthcare intermediaries that manage transactions by forming networks and transferring information and money. As a former antitrust enforcer, I can tell you that there are three essential elements for a functioning competitive market: (1) transparency, (2) choice and (3) a lack of conflicts of interest. This is especially true when dealing with health care intermediaries such as PBMs and health insurers where information may be difficult to access, arrangements are complex and clouded in obscurity, and there may be principal-agency problems. On all three of these elements the PBM market receives a failing grade.

Why are choice, transparency, and a lack of conflicts of interest important? It should be obvious. Consumers need meaningful alternatives to force competitors to vie for their loyalty by offering fair prices and better services. Transparency is necessary for consumers to evaluate products carefully, to make informed choices, and to secure the full range of services they desire. In both of these respects the PBM market is fragile at best. There is certainly a lack of choice especially for those plans that are dependent on the top tier big three PBMs (Express Scripts, CVS Caremark and Optum) which have an approximate 80% share of the market. And PBM operations are very obscure and a lack of transparency makes it difficult for plans, including government buyers, to make sure they are getting the benefits they deserve.

When dealing with intermediaries, it is particularly critical that there are no conflicts of interest. A PBM is fundamentally acting as a fiduciary to the plan it serves. The service a PBM provides is that of being an "honest broker" bargaining to secure the lowest price for drugs and drug dispensing services. When a PBM has an ownership interest in a drug company or has its own mail order or specialty pharmacy dispensing operations, it is effectively serving two masters

and may no longer be an "honest broker."

Moreover, when a PBM has its own pharmacy operations there are a myriad of competitive problems. Who will effectively monitor and audit the company-owned pharmacies? A pharmacy chain can use its PBM affiliate to disadvantage rival pharmacies, reducing reimbursement, and excluding pharmacies from networks. What about competitively sensitive information such as prices and costs? Where a pharmacy knows its rivals costs and pricing, it does not have to compete as hard. Ultimately consumers lose through less choice and higher prices.

The rapidly increasing drug costs which effectively lead to higher drug rebates for the PBMs leads one to question which master the PBM is serving. It increasingly appears that PBMs profit from higher drug prices, because they lead to higher rebates.

Competition and choice are crucial for a market to work effectively. North Dakotans should have the choice in how they value pharmacy services. Some choose community pharmacies, others who value one-stop shopping choose their local supermarkets, and others choose chains. This choice is important because competitors have to respond to this choice by improving services and lowering prices.

The legislation presented to this Committee is vital to provide needed protections to consumers, community pharmacies and payors.

Who Speaks for the Consumer – The Community Pharmacist

One important aspect of pharmacy services is the service pharmacists provide in assisting consumers in dealing with insurance companies and PBMs. Too often consumers are lost in a system where the PBM says "we don't have any choice, it's the employer who refuses coverage" and the employer says "we just do what the PBM tells us to do." No one takes responsibility or provides an answer. Who is there to protect the consumer?

The pharmacist is the advocate for the consumer. When PBMs create barriers patients typically seek help from their pharmacist to navigate their pharmacy benefit. Consumers can not battle with the PBM or insurance company. For these consumers, pharmacists act as an advocate, guiding consumers to use the lowest price drugs, explaining co-pays, and determining access. When a particular policy is problematic, the pharmacist will often work through it with the patient, providing explanation and even advocating on behalf of the patient with the PBM—going far beyond the tasks for which the pharmacist is paid.

Moreover, not only are pharmacies not paid for such services, but pharmacies are assessed ancillary fees by the PBMs not provided them at the point-of-sale to consumers. Additionally, in some instances in which the cost of a consumer's co-pay for a drug exceeds the cost of the drug itself, PBMs will claw-back the additional amount from the pharmacy. These practices place pharmacies in a position of not knowing what true reimbursement will be until months after they have dispensed the medications.[3] Such practices put pharmacies in peril of

[3] These practices also increase costs to the federal government. The Centers for Medicare and Medicaid Services

being able to continue servicing consumers.

S.B. 2258 provides protection for pharmacies from charges that are not apparent at the point-of-sale or at the time the claim for the dispensed drug is processed by the PBM. It also prevents a PBM from charging a patient a co-pay that exceeds the cost of the medication and prohibits the PBM from automatically clawing-back from the pharmacy the portion of the co-pay that has been patient by the patient. These provisions are necessary to allow pharmacists to continue advocating for patient coverage and protecting patients from egregious PBM practices.

III. A Broken Market Leads to Escalating Drug Costs and Rapidly Increasing PBM Profits

What is the result of this dysfunctional market? PBMs entered the health care market as "honest brokers" or intermediaries between health care entities. However, the role of the PBM has evolved over time and increasingly PBMs are able to — "play the spread" – by not fully sharing the savings they purportedly secure from drug manufacturers. As a result PBM profits have skyrocketed over the past dozen years. Since 2003, the two largest PBMs—Express Scripts/Medco and CVS Caremark— have seen their profits increase by almost 600% from $900 million to almost $6 billion.

If the market was competitive, one would expect profits and margins would be driven down. But as concentration has increased, the exact opposite has occurred.

There is tremendous concern over rapidly increasing drug prices which threaten our nation's ability to control the cost of health care. While PBMs suggest that they are there to control costs, these claims must be carefully scrutinized. The concern of a PBM is to maximize profits and that means maximizing the amount of rebates they receive. Since rebates are not disclosed, this is an incredibly attractive source of revenue. PBMs can actually profit from higher drug prices, since this will lead to higher rebates.

Would PBMs withhold their negotiating punch to secure higher rebates? We do not have to guess that this is occurring. PBMs have used similar strategies in the past. Indeed, as noted below state enforcers have attacked sweetheart deals PBMs arranged with drug manufacturers to force consumers to use higher cost, less efficacious drugs, in order to maximize rebates and secure kickbacks. They held back their negotiating muscle to allow prices to escalate to maximize rebates.

Facing weak transparency standards, the largest PBMs frequently engage in a wide range of deceptive and anticompetitive conduct that ultimately harms and denies benefits to consumers. Some PBMs secure rebates and kickbacks from drug manufacturers in exchange for exclusivity

---

(CMS) recently issued a report concerning the ancillary fees known as direct and indirect remuneration. CMS reported that compensation and rebates PBMs receive from transactions beyond the pharmacy point-of-sale is double the rate of gross drug spending by CMS on Medicare Part D prescriptions. Such ancillary charges to pharmacies place more burden on Medicare beneficiary cost-sharing and increasing Medicare's costs for these beneficiaries. CMS, Medicare Part D – Direct and Indirect Remuneration (January 19, 2017), https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-01-19-2.html.

arrangements that may keep lower-priced drugs off the market. PBMs may switch patients from their prescribed drug to a more expensive drug to take advantage of rebates that the PBM receives from drug manufacturers. PBMs often do not pass through rebates secured from drug manufacturers to payors, and instead are accounted for as a reduction in cost of revenues, allowing the PBMs to hide profits. In fact, Medco was the last PBM to publicly disclose rebates in 2012. In short, PBMs derive enormous profits at the expense of the health care system from the ability to "play the spread" between pharmaceutical manufacturers, pharmacies and health care plans.

No other segment of the health care market has such an egregious record of consumer protection violations as the PBM market. Between 2004 and 2008, Express Scripts and CVS were the subject of six major federal or multidistrict cases over allegations of fraud; misrepresentation to plan sponsors, patients, and providers; unjust enrichment through secret kickback schemes; and failure to meet ethical and safety standards. One of the most common forms of egregious conduct identified was PBMs switching consumers to higher cost drugs, that often were less efficacious, in order to maximize rebates. These cases appended to this testimony, resulted in over $371.9 million in damages to states, plans, and patients so far.

Unfortunately the provisions in the orders in each of these cases have expired, increasing the need for greater regulation and enforcement to ensure that the market functions with transparency, consumer choice, and free of conflicts of interest.[4] These problems are only getting worse. Case in point is the number of recent cases which are either ongoing or have recently settled. In 2014, CVS alone was responsible for over $30 million in penalties concerning violations of the False Claims Act and SEC violations.[5] In 2015, Express Scripts and CVS paid settlement fines to the federal government and to numerous states of over $129 million for illegal prescription dispensing and various violations of the false claims and anti-kickback laws.[6] Currently pending before the Delaware federal district court is a False Claims Act violation brought against Medco (now Express Scripts) on behalf of the U.S., California, Florida and New Jersey over claims the company defrauded state and federal health insurance programs by accepting undisclosed discounts from drug manufacturers and not passing on the savings to its clients, according to a recently amended complaint.[7]

Moreover, substantial private litigation is pending against major PBMs. For example, Optum Rx, has several separate suits filed against it. One by retail chain Kmart which alleged failure to pay reimbursements for dispensed drugs equating to $38 million in damages;[8] another by 55 independent pharmacies alleging illegal conduct serving to inflate patient costs while

[4] For a more detailed analysis of the federal and state cases against the PBMs, *see* David A. Balto, *Federal and State Litigation Regarding Pharmacy Benefit Managers*. http://www.dcantitrustlaw.com/assets/content/documents/PBM/PBM%20Litigation%20Updated%20Outline%20-%201-2011.pdf.

[5] *See* Testimony of David A. Balto, "The State of Comeptition in the Pharmacy Benefits Manager and Pharmacy Marketplaces," before the House Judiciary subcom. On Regulatory Reform, Commercial and Antitrust Law, Appx. A (Nov. 17, 2015), http://dcantitrustlaw.com/assets/content/documents/testimony/PBM%20Testimony.Balto_November%2017%202015.Final.pdf.

[6] Id.

[7] *John Doe v. Medco Health Solutions Inc., et al.*, Case No. 1:11-cv-00684 (D. Del.).

[8] *Kmart Co. v. Catamaran Co.*, Case No. 2015-L-008290 (Ill. Ct. Cl. Aug. 31, 2015).

simultaneously underpaying pharmacies;[9] and several others filed in 2016 alleging that Optum is overcharging patients for prescription drugs and pocketing the overcharge.[10] Express Scripts is currently facing a $13 billion lawsuit by its largest client Anthem for overcharges for prescription drugs.[11] Additionally, Express Scripts is facing several antitrust conspiracy suits in which plaintiffs have alleged Express Scripts engaged in a conspiracy with other major PBMs to exclude competing compounding pharmacies from their network, effectively forcing the competition to close and routing patients to the PBMs captive pharmacies. These cases have survived Express Scripts' motions to dismiss and one is set for a jury trial beginning in May 2018.[12]

IV. Legislation is Vital to Inform Payors and Protect Consumers

As a general matter it is essential to provide transparency for consumers, which helps them to adequately evaluate products carefully, to make informed choices, and to secure the full range of services they desire. In these respects the PBM market is fragile at best. PBM operations are very obscure and a lack of transparency makes it difficult for plan sponsors to make sure they are getting the benefits they deserve.

Responding to the numerous enforcement actions, both a handful of states and Congress have taken measures to enact transparency provisions by requiring some degree of disclosure of rebates and other revenue. In the multistate enforcement action against CVS Caremark, 30 state attorneys general required rebate disclosure. Additionally, the Department of Labor ERISA Advisory Council recommended PBMs be required to disclose fees and compensation to sponsors of ERISA health plans.[13] Finally, some large sophisticated health plans have negotiated for greater transparency.[14]

Although settlements from litigation and negotiations have helped to address some issues, without legislation, a lack of transparency allows PBMs to "play the spread" – the difference between a PBM's expenditure and the revenue it takes in – leading to higher costs for plan sponsors and patients. PBMs earn enormous profits by negotiating rebates and discounts with drug manufacturers in exchange for promoting certain drugs on their preferred formulary or engaging in drug substitution programs. PBMs also negotiate contracts with pharmacies to determine how much the pharmacists will be paid for dispensing medication and providing services. By paying a lower reimbursement rate to pharmacies, but failing to adequately disclose reimbursement rates and manufacturer rebates, PBMs can generate more revenue. In both

---

[9] *Albert's Pharmacy, Inc. et al v. Catamaran Corporation*, Case No. 3:15-cv-00290 (M.D. Pa. Feb. 9, 2015).
[10] *See, e.g, Stevens v. UnitedHealth Group, Inc. et al*., Case No. 16-cv-03496 (D. Minn.).
[11] *Anthem v. Express Scripts*, Case No. 16-cv-2048 (S.D.N.Y.)
[12] *HM Compounding Services v. Express Scripts*, Case No. 14-cv-01858 (E.D. Mo.); *Precision RX Compounding, LLC et al. v. Express Scripts*, Case No. 16-cv-00069 (E.D. Mo.).
[13] *See* PBM Compensation and Fee Disclosure, Report by the ERISA Advisory Council, Department of Labor (2014), *available at* http://www.dol.gov/ebsa/publications/2014ACreport1.html.
[14] Linette Lopez, The companies you've never heard of are about to incite another massive drug price outrage, Business Insider (Sept. 12, 2016) (reporting that some of America's biggest employers including American Express, Macy's and Coca-Cola have created an organization called the Health Transformation Alliance with the aim of breaking with "existing marketplace practices that are costly, wasteful, and inefficient, all of which have resulted in employees paying higher premiums, copayments, and deductibles every year" including PBMs), http://www.businessinsider.com/scrutiny-express-scripts-pbms-drug-price-fury-2016-9.

respects, PBMs can "play the spread" by failing to disclose these forms of indirect compensation. The failure to disclose these payments denies purchasers important information that impacts their buying decisions. [15] As a result, this lack of information often results in higher costs for consumers, health plans, employers, and other plan sponsors.

PBMs are free to "play the spread" between manufacturers, pharmacists and plans because of a lack of disclosure. Unclear and inadequate disclosure of rebates and discounts undermine the ability of plan sponsors to compare competing proposals. Because rebates, discounts, and other fee structures remain undisclosed, plan sponsors cannot clearly identify and choose PBMs offering the highest value services. PBMs' promise of controlling pharmaceutical costs has been undercut by a pattern of conflicts of interest, self-dealing, deception, and anticompetitive conduct. The dominant PBMs have been characterized by opaque business practices, limited market competition, and widespread allegations of fraud.

Increased disclosures by PBMs have resulted in price decreases and significant savings for health plans. For example, in the corporate context, a recent report revealed that Meridian Health System discovered that its drug benefit increased by $1.3 million within the first month of contracting with Express Scripts for PBM services.[16] Meridian discovered that they were being billed for generic amoxicillin at $92.53 for every employee prescription; however Express Scripts was paying only $26.91 to the pharmacy to fill these same prescriptions.[17] The result was a spread of $65.62 going back to the PBM. Meridian canceled its contract and switched to a transparent PBM which saved Meridian $2 million in the first year of its contract.

The provision of S.B. 2301 which requires PBMs to provide more transparency for employers and requires the PBM to disclose if the PBM practices spread pricing is vitally important for the employer to make informed contracting decisions to better service its beneficiaries.

V. Protecting Patient Choice and Eliminating Conflicts of Interest

The legislation before this Committee serves to protect patient choice. As consumers and patients we all understand the critical importance of patient choice. Only where consumers have the full range of choices does the competitive market thrive. Unfortunately, because PBMs have their own pharmacy operations – through retail stores, mail order, or specialty pharmacy – they are increasingly engaging in conduct that restricts patient choice and leads to higher costs and worse health care.

Forcing Consumers to use Mail Order

The major PBMs make a large portion of their profits by forcing consumers to use mail order. The major PBMs often restrict network options to drive consumers to their operations.

---

[15] Robert Restivo, Testimony before the Department of Labor ERISA Advisory Council at 15 (August 20, 2014) ("the [PBM] industry is beset with a lack of transparency that is difficult to deal with even for the largest employers."), *available at* http://www.dol.gov/ebsa/pdf/ACrestivo082014.pdf.
[16] Katherine Eban, *Painful Prescription*, Fortune Magazine (Oct. 10, 2013).
[17] Id.

Mail-order may be more costly, may result in significant waste, and fails to provide the level of convenience and counseling that many consumers require. Consumers may have existing relationships with a community pharmacy and may not wish to leave the pharmacist they know and trust to be served by a mail order robot. Others simply enjoy the ability to one-stop-shop and prefer the convenience of their supermarket pharmacy. The bottom line is that consumers are left worse-off when they are unable to choose the level of pharmacy care they desire.

Preventing Vulnerable Consumers from Using Their Community Specialty Pharmacy

The ownership of specialty pharmacies exacerbates the conflict of interest problem. Restrictive networks raise significant concerns for the over 57 million Americans that rely on specialty drugs.[18] Specialty drugs are typically expensive treatments that require special handling or administration. These drugs provide treatment for our nation's most vulnerable patient populations who suffer from chronic, complex conditions such as hemophilia, Crohn's Disease, Hepatitis C, HIV/AIDS, and many forms of cancer. The leading PBMs – Express Scripts, CVS Caremark and Optum own their own specialty pharmacies and increasingly force consumers to use their specialty pharmacy. Specialty drugs are expected to be the single greatest cost-driver in pharmaceutical spending over the next decade. The cost of specialty drugs is rising rapidly, with a projected increase to $1.7 trillion in 2030.[19] The leading PBMs' specialty pharmacies account for over 50% of the specialty drug revenue in the United States.[20]

The dominant PBMs are able to force consumers to use their own specialty pharmacies through restrictive networks. These networks can be higher cost and can also disrupt the continuum of care degrading health outcomes and increasing healthcare costs.[21] Patients on specialty drugs often require regular contact and counseling from their pharmacist. For many disease states, the pharmacist and health care team regularly contact the patient to make sure the drug is properly administered, taken on time, and the drug is working effectively. Disrupting this patient-provider relationship in complex and expensive treatment of very sensitive health conditions imposes significant harm to both the consumer and the health plan. We all know there is a profound difference between the personal treatment of an independent pharmacy and dealing with the automated telephone approach of the large PBMs.

Moreover, restrictive networks and steering practices rob consumers of the choice to use their preferred pharmacy and method of distribution; and—with this important rivalry gone—consumers also miss out on the benefits of vigorous competition, including lower prices and

---

[18] Laura Hines, *Soaring specialty drug prices leave patients seeking relief*, Houston Chron. (March 15, 2015).
[19] IMS Health, Overview of the Specialty Drug Trend (2014), *available at* https://www.imshealth.com/deployedfiles/imshealth/Global/North%20America/United%20States/Managed%20Markets/5-29-14%20Specialty_Drug_Trend_Whitepaper_Hi-Res.pdf.
[20] Adam Fein, The Top 15 Specialty Pharmacies of 2016, Drug Channels (Feb. 22, 2017), http://www.drugchannels.net/2017/02/the-top-15-specialty-pharmacies-of-2016.html.
[21] The vital service-related role of independent specialty pharmacies was described in my testimony before the United State Senate Judiciary Antitrust subcommittee concerning the Express Scripts-Medco merger. *See* David Balto, Testimony regarding "The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?" before the U.S. Senate Subcommittee for Antitrust, Competition Policy and Consumer Rights, December 6, 2011, *available at* http://dcantitrustlaw.com/assets/content/documents/testimony/SenateJudiciary.ESIMedci.Balto.pdf.

improved service. These restrictive networks deny patients a choice in provider and, given the high-touch nature of services in this area, this choice is highly valued by many consumers. The PBMs' ability to impose restrictive networks harms consumers that depend on the high-cost products and services that are of great, and even life-altering, significance to these vulnerable patients.

Finally, there is the fox guarding the hen house problem. When a PBM has its own specialty pharmacy, it no longer clearly serves the plan – rather, its incentive is to increase profits by forcing consumers into the PBM's specialty pharmacy.[22] The New York Times poses the appropriate question: "pharmacy benefit managers like CVS and Express Scripts…are supposed to help health plans control drug costs. But will they have the zeal to do that if they are making money dispensing these expensive medicines?"[23]

Of critical importance here is the fact that North Dakota community pharmacists are not looking for a "handout" from the PBMs, the state or the federal government; they simply want the ability to compete on a level playing field. This further demonstrates the anticompetitive practices utilized by the PBMs. If a small business community pharmacy is willing to accept the same contract terms as, for example, CVS, but is denied the opportunity to contract, one of two things is happening: either CVS's contract is raising costs for consumers by not offering the lowest price true competition would yield, or consumers are needlessly suffering poorer pharmacy access and choice.

The provisions of S.B. 2258 and S.B. 2301 serve to help eliminate many of the conflicts of interest explained above. The legislation allows a pharmacy to mail or delivery medications as an ancillary service of the pharmacy. This is a practice that North Dakota pharmacists have been providing for over 125 years. Additionally, the legislation provides increase in patient access and choice for patients purchasing specialty medications. By preventing the PBMs to require standards more stringent than federal and state requirement for licensure in the state of North Dakota, and allowing a licensed pharmacy to dispense any and all drugs under that license, the legislation will help ensure adequate pharmacy access and choice for North Dakota consumers.

VI. Conclusion

S.B. 2258 and S.B. 2301 will have a significant, positive impact on North Dakota consumers, providers and employers. PBMs operate with little transparency and inherent conflicts of interest engaging in deceptive practices. Without transparency, PBM profits will continue to rise exponentially at the expense of small business pharmacies and patients. Broadening transparency requirements on PBMs will allow pharmacies to better ably serve their patients by being able to receive fair reimbursement, and allow payors and employers to make informed contract decisions before it enters a deal with the PBM. Conflicts of interest in owning

[22] Katie Thomas, Specialty Pharmacies Say Benefit Managers Are Squeezing Them Out, New York Times (Jan. 9, 2017), *available at* https://www.nytimes.com/2017/01/09/business/specialty-pharmacies-say-benefit-managers-are-squeezing-them-out.html.

[23] Andrew Pollack and Katie Thomas, Specialty Pharmacies Proliferate, Along With Questions, New York Times (July 15, 2015), *available at* http://www.nytimes.com/2015/07/16/business/specialty-pharmacies-proliferate-along-with-questions.html?_r=0.

mail and specialty pharmacies significantly inhibit patient choice and access to their preferred providers. Allowing increased choice and access to community pharmacy will foster greater competition to the benefit of plans and ultimately to consumers. We urge you to vote to pass both S.B. 2258 and S.B. 2301.