

FROM THE DESK OF

FORMER STATE SENATOR JASON RAPERT (AR)

June 12, 2024

Ohio House of Representatives Insurance Committee

Ohio Statehouse

1 Capitol Square

Room 122

Columbus, Ohio 43215

Dear Chairman Lampton & Ohio House Insurance Committee Members:

I am presenting this testimony to personally express my support of HB 505, the "Community Pharmacy Protection Act" sponsored by Committee Vice Chair Rep. Tim Barhorst and Rep. Brian Stewart, addressing the pressing need for Pharmacy Benefit Manager (PBM) reform, transparency, accountability, and oversight in the State of Ohio. Your state has the opportunity to join with other states around the country by passing these much-needed reforms that will benefit and protect all consumers in Ohio. It is the right thing to do.

When I was recently briefed on your pending legislation and asked my opinion, I decided to personally come to Columbus, Ohio to testify in support of this important legislation. Prescription medications are an important part of the American healthcare system and Ohio citizens deserve to have confidence that they can access low-cost prescriptions for themselves and their families. I urge all members of the Ohio State House to vote for HB 505.

I served in the Arkansas State Senate from 2011 to 2023, served as chairman of the Arkansas Senate Insurance & Commerce Committee, and also served as president of the National Council of Insurance Legislators (NCOIL). During my tenure as president of NCOIL in 2018, I sponsored the NCOIL Pharmacy Benefits Manager PBM Licensure and Regulation Model Act - the first such national model bill calling for Pharmacy Benefit Managers to be licensed and regulated by state insurance departments in the nation. I have also spoken and presented nationally on the PBM issue by invitation from various organizations including the American Medical Association (AMA), National Association of Insurance Commissioners (NAIC), National Council of Insurance Legislators (NCOIL), Coalition Against Insurance Fraud, National Community Pharmacists Association (NCPA),

Independent Pharmacy Cooperative (IPC), Arkansas Pharmacy Association, Coalition of State Rheumatology Organizations, Pharmacists United for Truth & Transparency, and the American Pharmacy Cooperative, Inc. just to name a few.

Based upon the latest data I have been given, the NCOIL PBM model legislation we passed has been used as the basis for over 60 major pieces of PBM legislative reform since 2018 and was recently readopted by NCOIL at their 2023 Spring Meeting. I was also advised by those monitoring the adoption of PBM reforms around the country that over 200 pieces of legislation had been filed in approximately 40 states utilizing some aspect of our NCOIL model legislation. I was also sponsor and co-sponsor of several key pieces of legislation that has brought about PBM reform in my home state of Arkansas. **Contrary to what some may claim, PBM reform has NOT caused price increases in Arkansas or any other state where PBM reforms have been enacted according to the state officials I have visited with.**

According to various published studies, our nation has three Pharmacy Benefit Manager (PBM) companies that control approximately 80% of the entire PBM industry. Based on public reports the three largest PBMs in our country are CVS Caremark, Express Scripts, and OptumRx. These three entities wield tremendous power over access to prescription medications in our nation, have enjoyed a virtual monopoly over the cost of drugs in our country, and maintain inordinate power over access to prescription drugs. They have literally made billions of dollars in profit by maintaining an iron grip on access to prescriptions and controlling drug formularies in the United States while the rest of the healthcare delivery system has experienced trouble continuing to provide services in many communities throughout our country.

To be fair, not all PBMs are bad actors, but some of these entities have used their huge profits to buy insurance companies, purposely underpaid pharmacists below cost of medication, they have gobbled up small pharmacy stores around the country, run small independent pharmacies out of business, have operated without proper public oversight in many states, and they have regularly intimidated anyone who calls for regulation to create fairness in the marketplace. They have spent large sums of money lobbying legislators and regulators to oppose regulation and accountability and I am certain they are working hard in Ohio to demonize those who are standing up for consumers in support of the legislation you are now considering. I implore every state legislator in Ohio to resist their strong-arm tactics and claims that the world will end if they are held accountable by this legislation and your state Insurance Department - *it is nothing but scare tactics*. They have escaped the light of proper regulation for far too long around the country and they are fighting tooth and nail to oppose every state that has attempted common sense reforms. **The people of Ohio deserve to enjoy the benefits of PBM reform that will most likely reduce costs and hold large corporate PBMs accountable to the people of your state.**

Several years ago, I became aware that one of the most expensive problems in our healthcare system is the out-of-control cost of prescription medications. This harms citizens, harms insurance companies who pay for prescriptions, and creates tremendous stress on healthcare delivery in our nation. I reiterate, it is well documented that some of the largest PBMs in the nation have been bad actors. In state after state, investigations have shown that some of these PBMs have purposely undermined independent pharmacists, been guilty of dealing unfairly, intimidated pharmacists and threatened to cancel contracts when pharmacists have sought to intervene on behalf of patients, engaged in "rebate" demands which are effectively nothing more than "pay to play" schemes, and spent large sums of money lobbying state legislators to buy favor and escape regulation that would hold them accountable.

Lest you get the wrong impression, I do not oppose the operation and benefit of honest PBMs to contract with insurers to manage prescription drug benefits. I personally have a strong conservative legislative record. **I am all for free market capitalism as a conservative legislator - but I am NOT for a license to steal.** To use an old sports analogy, the big three PBMs have been playing street ball by their own rules for far too long. I would never advocate that they cannot play ball, but I believe every reasonable person should see that having a referee on the court to hold them accountable and ensure everyone plays fair is a good thing.

**Think about this reality for a moment - in state jurisdictions all over this country insurance companies must answer to insurance departments, doctors must answer to medical boards, pharmacists must answer to pharmacy boards, hospitals must answer to state regulators, but PBMs have historically never had to answer to anyone.** Why is that? It is no secret that many complaints have been filed about the unfair practices of PBMs, lawsuits have been filed, investigations have been carried out, and public policymakers have been called upon to address the problems. Millions of dollars in overpayments to PBMs have been documented and millions of dollars of fines or penalties have been imposed on the PBMs responsible. For over 150 years the business of insurance has been regulated by individual states through their own insurance departments. With the exception of cash pay, every prescription transaction in America involves insurance payments or taxpayer money to be expended through Medicaid or Medicare. The individual state insurance departments are the proper place for licensing, registration, regulation and enforcement authority to be established. NCOIL debated, discussed and passed model legislation calling for insurance departments to be equipped to help protect consumers and ensure PBMs are operating fairly in their states. History has shown that PBMs engage in unfair practices and have exhibited corporate greed that has harmed individual consumers, the pharmacy industry, and taxpayers.

I have some very specific points to share with you about the PBM issue and your pending legislation as follows:

- Ohio is joining a growing number of states that have taken advantage of the NCOIL PBM Model Bill to create protections in the prescription drug marketplace

for patients, plan sponsors and the pharmacy providers to end PBM abuses that distort the marketplace and raise drug costs.

- Ohio, like other states that started dealing with PBM abuses in the 2010 s, enacted a requirement for PBMs to register with your state insurance department in order to operate in this state and subject them to several state statutes on PBM activities, such as development and appeals of generic drug price reimbursement (so called "MAC lists") and pharmacy audit protections.

Since that time, with the NCOIL PBM Model Bill being available to state legislatures, over two dozen states have enacted statutes to fully license PBMs under their state insurance statutes that follows closely the NCOIL Model PBM legislation. This model has given these states statutory language to enact state licensure of PBMs under state insurance statutes and provides a statutory "chassis" for each state to build out the rest of the statutory "car" to regulate PBM activities that a state believes are important protections for the marketplace, patients and pharmacy providers.

**I would urge HB 505 bill sponsors and this committee to amend this bill to include the NCOIL PBM Model Bill's licensure provisions.**

- HB 505 offers many important marketplace protections from ongoing PBM abuses that add costs which really only benefit the PBMs bottom line at the expense of patient care and the ability of pharmacists to serve patients. Among the important PBM reforms in this bill dealing with the economics of the PBM issue are as follows:
  1. To control drug costs, **mandating in Ohio public sector prescription drug benefit programs use of transparent, cost-based "pass through" prescription claim reimbursement methodology** (Section 3959.21) to pharmacies to ensure that patient access to all their medicines are protected so pharmacies can carry all prescriptions needed to serve patients, and the State of Ohio will only be charged for the actual cost of prescriptions as a "pass through" to ensure an end to "spread pricing".
  2. Ohio was an early leader in identifying PBM overcharges to your State Medicaid program from Medicaid managed care PBMs that you have now reformed with a state mandate for this cost-based reimbursement to be used in Ohio's Medicaid managed care program through the state's contracted Managed care program single PBM. I am aware that some other OhioPhilli publicly funded prescription benefit programs have also identified such "spread pricing" overbilling by PBMs. This provision of HB 505 is an important protection of the public employees' sector drug cost spending to ensure those dollars are only to cover total claims costs (plus an upfront, legitimate PBM administrative fees)
  3. **Prohibits extra accreditation on pharmacies** (Section 3959.151 and Section 5167.127) beyond current Federal and State regulatory licensing requirements which also provide no benefits to patients or plan sponsors.

It's just another hidden revenue source for PBMs and a tool for PBMs to limit competition by forcing patients to go to their own "accredited" specialty mail house pharmacies which decide how much to pay themselves for these high-priced medications.

4. **Medicaid managed care drug cost disclosure requirements** (Section 5164.753, Section 5167.127, 128 & 243)
5. **Civil right of action by patients or pharmacies for violating extra accreditation prohibitions** (Section 5167.128)

As a supporter and co-sponsor of Arkansas ACT 900 that was upheld in a unanimous decision by the U.S. Supreme Court in 2020 in *Rutledge v. Pharmaceutical Care Management Association*, the Court held that Arkansas Act 900 is not preempted by the Employee Retirement Income Security Act of 1974. I have been advised that **there is no conclusive evidence in Arkansas or any other state that PBM regulation laws dealing with economic issues have increased prescription drug coverage costs.** I am advised approximately 20 states have now followed suit to enact similar PBM regulated practices laws.

Ideally there should be a free market regarding prescription benefits, but that is not happening now with over 80% of all prescription drug claims in America being controlled by just 3 companies who in some cases have gobbled up other PBMs, run many pharmacies out of business, and even bought out major insurance companies along the way. **That's market concentration and control that increases prescription drug costs to patients and plan sponsors.**

PBM predatory practices, where they decide alone who gets paid – and they can also pay themselves – jeopardizes patient drug therapy treatment by placing community pharmacies under financial pressures to accept below-cost payments, not being able to carry all high-cost drugs, and many often go out of business. This pressure is affecting both non-PBM owned chain drug stores as well as small, community based independent pharmacies, and is a leading cause of many communities losing access to prescription services except through mail order – which are owned by the PBMs. This is the so-called "pharmacy deserts" crisis in both rural and urban America.

For the benefit of Ohio patients, plan sponsors and pharmacy providers, Ohio is on the right track with HB 505. It is win-win-win legislation that will positively benefit everyone in Ohio. Up until now, PBMs have played the game without any real objective rules in place, they have been able to determine how much to charge, how much pharmacies make, what patients pay, and how much they profit without any rules ensuring fairness.

In closing, I ask every state legislator to consider the families in their communities, their friends at church, their neighbors and themselves. Do you really want the corporate PBM monopoly to be the decision maker in what medication you are allowed to get and not your own personal doctor? Do you really want middlemen making billions of dollars off of lifesaving medications at the expense of consumers,

and perhaps even denying lifesaving medication to someone who depends upon that medication just to survive?

The golden rule says that you should do unto others as you would have them do unto you. It is time for every state legislature to teach this lesson to the bad actors in the PBM industry by passing legislation authorizing state insurance departments to license, register, regulate, and use enforcement authority to ensure citizens are protected and PBMs are held accountable. **Now is the time for Ohio to pass HB 505 and put Ohio patients and consumers first when it comes to prescription drug costs.**

Thank you for your time and consideration of my testimony in your proceedings. Please call on me whenever I may be of service.

Sincerely yours,

A handwritten signature in black ink that reads "Jason Rapert". The signature is written in a cursive, flowing style.

Jason Rapert  
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