

Hello Madam Chair and members of the Senate Human Services Committee,

Thank you for bringing HB 1492 back to committee to discuss a very important and timely amendment to HB 1492. The amendment deals with the 340B program of the Public Health Services Act. For those of you who are not familiar with the 340B program, here is a quick overview.

Basically, the 340B program enables covered entities (critical access hospitals, federally qualified health centers, etc.) to stretch federal resources as far as possible, reaching more under insured and uninsured patients, especially when it comes to prescription drugs.

Manufacturers participating in Medicaid agree to provide outpatient drugs to covered entities at significantly reduced prices. Eligible health care organizations and other covered entities contract with pharmacies to provide these medications to eligible patients. To make a long story short, pharmacy benefit managers have now decided to insert themselves in the middle of the covered entities and pharmacies. Starting March 1, 2021 and July 1, 2021, pharmacy benefit managers are requiring pharmacies to report 340B claims to the PBMs which will result in a different pricing model where the monies from the 340B program will go to the PBM and not the pharmacies and covered entities (critical access hospitals) for example. To make a long story short, CMS and HRSA have stated they do not believe there was ever legislative intent for PBMs to insert themselves in the middle but they also do not feel they have the authority to stop it from happening. We have seen at least 4 other states address the issue with many more attempting to do the same.

Part of why this amendment is in front of you now is because the PBMs did not send notice until February of this year. In one instance, one PBM gave notice the last week in February and gave pharmacies one week to comply with a March 1, 2021 deadline for compliance. I will save all the additional details until we can formally discuss the amendments. I appreciate your willingness to discuss the amendments. Please let me know if you have any additional questions in the mean time. We are happy to accommodate your schedules and look forward to discussing further.

As always, thank you for your time.

Respectfully,

Mike Schwab

EVP - NDPhA

701-258-4968

A new section to 19-02.1 of the North Dakota Century Code is created and enacted as follows:

1. As used in this section:
 - a. Pharmacy benefits manager – has the same meaning as in section 19-03.6-01
 - b. 340B Processor – means an entity which functions between a covered entity and a pharmacy in administering a 340B program in accordance to the wishes of the covered entity.
2. No pharmacy benefits manager or 340B processor may discriminate against or interfere with a covered entity participating under section 340B of the Public Health Service Act, as amended to January 1, 2019, or any pharmacy under contract with a covered entity under section 340B of the Public Health Service Act to provide prescriptions or pharmacy services on behalf of the covered entity
3. For the purposes of this chapter, a pharmacy is any pharmacy licensed under the laws of this state, and no pharmacy benefit manager may, by contract, provider manual or other means, modify that definition, or implement discriminating pricing models or interfere with any 340B pharmacy service between the covered entity and the contracted pharmacy.
4. A pharmacy benefit manager or 340B processor that violates this section is guilty of a class B misdemeanor per violation occurrence.