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1244

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1244

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1244

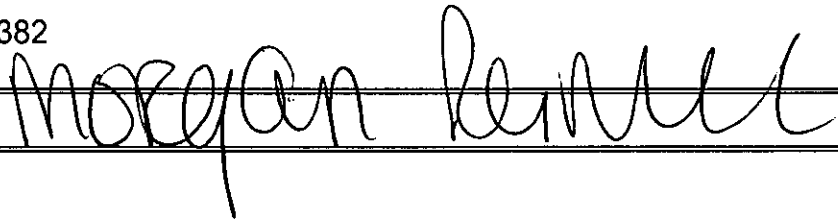
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1382

Committee Clerk Signature



Minutes:

Rep. Kasper: *HB 1244 deals with Pharmacy Benefit Managers (PBM's). Briefly bills similar have been heard in our IBL Committee in the House and Senate side the last two sessions. It is somewhat a technical area and that is a part of my presentation that I'll go through when I come back. This bill deals with the ND Public Employees Retirement System (PERS). You should be receiving information that myself and our co-sponsors feel is important for disclosure and information in the PERS board so they can determine what the costs of the pharmacy part of their health plan is about. I know there is some heartburn with some of the members of the audience about the amendment. I just want to say that I am certainly open to that discussion, in fact I have an amendment that I will introduce in the next part of my testimony. I know that you will hear good information in testimony from those in the room about the merits or the demerits of this bill. I am willing to work with those who have the concerns that they do have to move forward to amend this bill. Also, to provide the PERS board what I believe is full disclosure in the area of PBM side of their health insurance plan for the state employees. After all, our health funds are all covered under that as well as some 12,000 other employees. It is funded by the citizens of ND and it is my intent on this bill to have as much information to the*

PERS board to make wise decisions on the carriers and the managements of the pharmacy part.

Rep. Dahl: The bill says that the board shall update and maintain their public records>

Rep. Kasper: That is the area of the bill that you will hear from those in the room that are concerned about it. That is also the area of the bill that I am certainly open to discussing amendments, and I think they may even have an amendment. With that, I must go but I will return.

Rep. Haas: Is there any more testimony in favor of HB 1244? Is there any opposition testimony?

Rod St. Aubyn: I think this is rather unfair that when all of a sudden this is alluded back to the personal amendments. How are you supposed to address the bill if there are no amendments? If we had the amendments it may change the testimony totally. It really puts us in a really awkward situation. I guess I ask you how we should proceed.

Rep. Haas: I think what we're going to do, and I had sort of a plan to delay this hearing. We have one bill that we can perhaps discuss briefly and take some action on. We can do that and recess the hearing until Rep. Kasper gets back. I think we are going to recess the hearing for just a few minutes and take up HB 1127.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1244

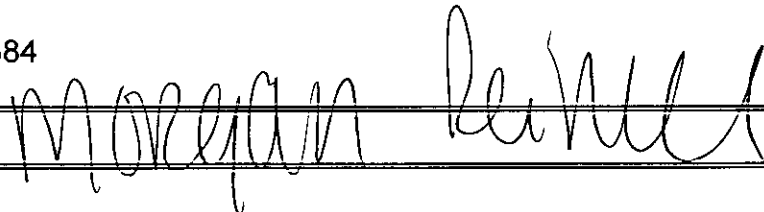
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1384

Committee Clerk Signature



Minutes:

Rep. Haas: We are going to reopen the hearing on HB 1244 and hear Mr. Collins' testimony.

Sparb Collins: Testimony Attached.

Rep. Potter: The bottom of page 2 talks about spread pricing. We do get reports on rebates that they get from the PBM. It said the first one does not allow spread pricing. Will you remind me what spread pricing is?

Sparb Collins: One of the things that it meant is that the PBM has difference in the amounts of PBM reimbursement and the amounts that the pharmacy charges. There is a little bit of an administrative or care charge. There are other meanings in the term spread pricing, but it is used in different content. All PBM's will have some sort of administrative charge, and that may be charged in the contract. If you add 50 cents on a claim for example, you pay the pharmacy additional money for the difference.

Rep. Haas: Are there other questions?

Rep. Dahl: You mentioned that the PERS board may want to follow up with some additional thoughts.

Sparb Collins: The next time we are going to be meeting is in February. With the bill as amended, at this point there are three observations we have mentioned in the bill. I want to

also point out that I have an attachment; we asked our carrier, Blue Cross Blue Shield (BCBS), if they would sign an agreement with us with the language in there as it is written today. Their answer was no.

Rep. Haas: I know this is probably beyond your control but, you're working with BCBS with two PBM's, is that correct?

Sparb Collins: Just one. We have a contract with BCBS, well I should clarify that. For the main plan, it is the company called Prime Therapeutic. They knew the information. It is really them that are part of the major plan who administers our Blue Rx plan. They put together a product that replicated our plan. That is what our retiree's benefit from now. That entity then gets the federal government to make payments to the qualified drug plan. It helps to offset premiums for our retirees. So when that was first implemented our retiree's premiums went down by a total of \$3 million dollars. Prime Therapeutic is the same company that administers claims for Medicare Blue Rx.

Rep. Wolf: Why do you want to go one step further, is there problems? You mentioned in the testimony that you wanted to be able to go one step further, do you want to look at the information directly from the PBM, and why?

Sparb Collins: It's just for the board's oversight responsibility and paperwork. We want to monitor. We have someone that goes into the office on the claim and takes a look at it. We have to take one step back to look at the amount. It would just be part of the oversight responsibility. I would expect at some point, maybe in a different contract, you as a legislature might ask us well what you are doing to make sure you're getting the claims. It would just be part of that oversight.

Rep. Grande: On page 5 of your testimony, Medicare part B where you say instead we pay the plan for providing services for our members and they receive the federal subsidy. Are they

the retiree?

Sparb Collins: No, they means the prescription drug place. The way it is set up, underneath the federal procedures, there are all different plans that are qualified. They are eligible for funds to come from the federal government and offset the premiums that have been charged. You may remember that on a federal level, should each of these plans now negotiate with drug companies and get the prices that should be done. We just pay a fixed amount there and we aren't getting into an arrangement were we share that.

Rep. Haas: Is there any additional questions. At this time we are going to recess until Rep. Kasper returns.

2007 HOUSE STANDING COMMITTEE MINUTES

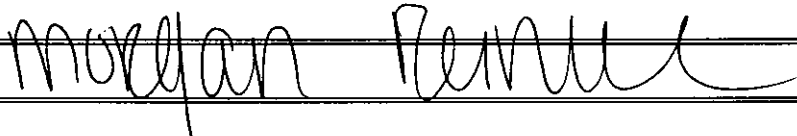
Bill/Resolution No. HB 1244

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1385

Committee Clerk Signature 

Minutes:

Rep. Haas: We will reopen the hearing on HB 1244.

Rep. Kasper: *What I would like to do is give the committee a little bit of a background on the PBM's insurance industry and insurance companies. What I've learned about PBM come from the two sessions where we have dealt with PBM problems. We have our employer, our insurance company, and our PBM. I am in the insurance business. I've sold life and health insurance for many years throughout North Dakota and Minnesota, so this is my career. We have the employer who contracts with an insurance company to provide health insurance for his or her employees. What's happened over the years to deal with managing prescription drugs, a PBM industry has formed (Pharmacy Benefit Manager). The PBM has been formed in the beginning to provide records of how prescription drugs were charged and paid. So the customer, when they receive a drug, the PBM would track the drug they would charge with the insurance carrier and charge a fee. The PBM collected two types of fees, a monthly administration fee and a fee for the number of prescriptions that were filled. That was the original design of PBM's and it worked well for many years. As the industry has evolved, in my opinion, problems have resolved from it. The PBM has changed their scope on how they do business from simply a fee to a huge profit. What has been added in the PBM are rebates,*

sometimes spreads, and some other method of taking revenue out of the system and into the pockets of the PBM's. An example of a scope of a PBM is when I asked what the profit of the PBM five or six years ago was compared to now. The gentleman stated in 1999 the revenue was around \$5 billion. In 2005 it was around \$36 billion, so they have grown tremendously over that period. The big growth is in the area of their rebates and their spreads. The PBM industry has now become a multi billion dollar industry and has become a source again of huge cost to the consumers. So let's talk about the PBM. As I said the monthly transaction fee might be five dollars a month. The prescription fee might receive a \$3-\$5 a month. What a PBM does to receive a rebate, they go to the drug manufacturer where you hear the term formulary. A formulary is the amount of drugs the insurance can buy from the PBM. What happens is the PBM sets their formulary and they go to the drug manufacture and say that they plan on bringing them \$100 million of prescription drugs business for the next 12 months. For that \$100 million we want a rebate. My bill causes problems saying that the amount of rebate would have to be fully disclosed including the prescription. The PBM couldn't trade secrets then. The question is what service the PBM is providing to the employer for this \$10 million rebate. In my eyes that is an additional cost to the business. It is not fair. What my bill requires is that these rebates would have to be fully disclosed to PERS and to the public. My amendment will still require that PERS give full disclosure on the rebates. That is important because in the pricing of health insurance, if there is revenue flowing into that PBM, we as a state can share in part of the rebates which would lower costs. PBM's do negotiate with employers and share the rebates. What I'm saying is that the PERS board must get entered into the contract to be eligible for rebates. They can determine the pricing of what they pay for what they get for shares in the state funds. Let's say an employee goes to the pharmacist and buys a drug for \$80. The PBM reimburses the pharmacist for the \$80 and the employee then

would have taken his or her copy and the pharmacist will get the money. The spread is when the employer who pays the bill is charged \$100 dollars for what should have been \$80. That is common with PBM's, not all of them, but most. PBM's have said all along that employers know all about this. I can assure you that it's not true. This is a very complicated, technical thing that you are seeing this morning. Most employers who buy health insurance, at least in ND, know very little or nothing about it. Some of the larger ones are beginning to catch on now because they can hire council and consultants to help them. The contract that PERS has with our health care here now, I've been told there are no spread prices. My bill says that if there are spread prices and rebates it must be disclosed to the board so they know. The third area that is causing a lot of cost to the system is mail orders which is causing a lot of problems to local pharmacists. If a PBM and if they have a mail order service, and a customer orders his or her drugs right from the PBM through the mail order, our ND pharmacists are cut out. What PBM's do which is a very subtle thing, is they try to incent the customer to order from mail order by this mechanism. Some of you may have experienced it. If you order your prescription from your mail order PBM we will give you 90 day prescription fill where you pay one co pay and one deductible for your 90 days. If you don't order it by mail order you can only get a 30 day supply. So in 3 months you pay 3 co pays. Of course the argument from the PBM is we are going to save the customer and the consumer's money. I say maybe but we don't know because we don't know what the pricing is. So I'm saying that in the bill that the PERS board would have notification and complete information on mail order pricing. So my bill does is make PBM's have full disclosure to ND PERS board and what is going on with our PBM's in ND. This bill is not meant to target any one company, because it requires that whoever is involved with health insurance has to abide by the same thing. I do not wish to trade secrets or hurt other business with their competition. I will show you this amendment

Amendment attached.

Rep. Kasper: *My amendment says that the PERS board can get all the information they need. Last session they did pass the bill that the insurance commission has some oversight in this area and the intent of this amendment is that they will keep this oversight. The intent is to keep the commissioner involved in the process. Why is this good public policy? One of the largest costs for this legislator to address is the health insurance benefits that we provide for the public employees of the state of ND. I think that it is in the best interest of our constituents that we pay the right public policy so that the PERS board can know what the costs are and they get the best information possible. I believe we must put this in statute and get this information from the PBM.*

Rep. Schneider: Will your proposed amendment trump the full public inspection?

Rep. Kasper: Yes it will. It would replace the bill before you and the last sentences would be wiped out.

Rep. Haas: I might mention to the committee that with this amendment, it is a total substitution for what we had earlier. We probably won't act on this bill today, so I would like to recommend that you go to your century code and look at chapters 26.1-27.1. Is there any additional testimony in favor of HB 1244? Is there opposition testimony?

Rod St. Aubyn: Testimony Attached:

Rep. Froseth: If this amendment passes would that also effect the relationship between the PBM's and the manufacturer's contracts?

Rod St. Aubyn: Yes it could. We don't know. It's a situation where they might say it's not worth it, let's not bid. I can speak for our PBM and they are extremely doubtful.

Rep. Dahl: There are no other states with anything even remotely similar to this?

Rod St. Aubyn: I think the state of Maine had some stuff like this in their PBM bill and it has been to court many times. South Dakota passed a watered down version of this. You have to understand the original PBM bill was introduced. They don't want to see these networks have this kind of stuff. They could charge more themselves, and that's business. Pharmacists have an option of either accepting the terms of a contract like that or not. Instead they would rather see the PBM's do this.

Rep. Schneider: If this information is so proprietary and confidential that we can't even let the members of the board have this, how did it get to Rep. Kasper's reach?

Rod St. Aubyn: That is something where you negotiate with the group and we did agree to share information with PERS and the PERS board so they can manage their plans, but it was never intended to be released. So there was nothing to force us to do that, it was just negotiations. We agreed. Would we do it again? Based on this, I'm not sure.

Rep. Schneider: What is Blue Cross Blue Shields position on the mail order aspects?

Rod St. Aubyn: Our position is that we have always allowed the local community pharmacy the same. Fully insured products assume all risk. Self funded is paying someone to administer their plan if there is any losses; they have to come up with the money. Self funded are exempt from these regulations. The result does not apply to them. 50% of our business in ND is self funded. There are some self funded plans that do have some limitations on the mail order.

Rep. Kasper: I have the pages that Mr. Collins gave me that you said I refused to give to him. I did not refuse to give it to him; I said I would give it back to him. I also reassured him that there would be no other copies made. The only other copy I made of this was when I gave it to legislative council to draft the amendment. We have a client relationship with them, and I will make sure their copy is destroyed. Before the hearing is done, Mr. Collins will have this back

and there are no other copies. I wanted to clear that up. I do want to know how Mr. Collins came in position of these pages.

Rod St. Aubyn: I just explained that.

Rep. Kasper: You gave it to him?

Rod St. Aubyn: WE gave it to him based on negotiations with different things that we are supplying with the idea that they are not going to share it.

Rep. Kasper: So right now, under the law, there is no confidentiality provisions of what PERS receives from you? So this is an oversight on Mr. Collin's part to give it to me?

Rod St. Aubyn: that would be my assumption.

Rep. Kasper: I want to publicly state that this is certainly not done with any malicious or intent on Mr. Collins part, it was an honest mistake. I am the recipient of an honest mistake which I didn't want it if I shouldn't get it.

Rod St. Aubyn: I was just responding to the question I asked. I was told that they were going to request it back. We wanted the copy back; it does create a disclosure problem. I was told specifically that he would not disclose the information in the committee but he wasn't giving it up.

Rod St. Aubyn: This information is pertinent. This is exactly the type of information that the bill is trying to release. The other thing is that the comment was made that this is just about rebates. I reference you back again to my testimony.

Rep. Kasper: You said that your concern is that there may not be any PBM's that would bid on the ND PERS business. It is my understanding that under the current contract the Blue Cross and PERS have is that you will not allow them to separate the health insurance aspect from the PBM aspect. You have indicated that you could not do that? I am just asking for clarification.

Rod St. Aubyn: We don't control how they write their bid. We just said that we would not enter a bid that had a separate deal. If they want to do that they certainly can. We don't have any control to tell them what they are going to put in their bid and that is the same thing with any items in here. If you want to put all these stipulations in there that is your option. That way if you don't get any bids they can go back to Plan B and do something else.

Rep. Kasper: What you said is under the current contracts you would not allow PERS to have a different PBM if they wanted to because that is the current contract with the ND PERS. If in the future their bid said they wanted to separate the PBM from their health insurance you would refuse to bid?

Rod St. Aubyn: We would have to evaluate that at that time, but now we don't think we would.

Rep. Kasper: Are you aware of how many PBM's there are in the US that you alluded in your testimony to the provider networks your PBM has which is very good, but there are many numbers of PBM that have provider networks that could provide services similar to yours. You wouldn't even know because of proprietary information whether or not their provider network has better discounts than yours.

Rod St. Aubyn: No, that is confidential between the PBM, the health plan, and the provider. The provider should have to say something. This is something that is pretty common because of Part D. There is a lot of plans that have these networks in the states.

Pat Ward: I did not come here today planning to testify. I represent Medco health solutions, which is one of the 3 big PBM's in the US. I do want to make just some general comments. One of them is that a little knowledge is dangerous. Frankly, this is a very complicated contract. We have concerns. They do make a profit and that is why they are in business. This is very complicated and is not something you can learn about in a couple of minutes. I would consider this to re refer this to IBL where they already know this process.

Rep. Kasper: The way I understand the bill, we aren't getting into anything with profit with PBM's. The bill now with the amendment is to provide that PERS receives information on rebates and spreads. Not that anything changes.

Pat Ward: I did not see your amendment until about 15 minutes ago. The amendment certainly improves the bill but from my understanding is that you are talking about arrogates of spread but not specific pricings of drugs. My concern is that if rebates have to be disclosed, it's just like the guy that is selling a car. If I know what he's buying a car for and offer it lower, there goes any competition he had. I really think that in the long run it might cost the state money.

Rep. Haas: Is there additional testimony to opposition to HB 1244?

Rep. Froseth: I would like to hear the commissioner of insurance's opinion on how this has been working.

Rep. Haas: Any other comments? If not we close HB 1244.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1244

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1928

Committee Clerk Signature

Morgan Penner

Minutes:

Rep. Kasper: I move for a do not pass.

Rep. Potter: I second that.

Rep. Haas: Is there any discussion? If not we will take a roll call vote on a do not pass on HB 1244. The do not pass motion has passed with a vote of 11-0-2. Is there a volunteer to carry this bill?

Rep. Kasper: I will

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1244

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health insurance, pharmaceutical manufacturer, and pharmacy benefit manager records obtained by the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Disclosure of certain health insurance contract provisions to board - Confidentiality. Notwithstanding any other provision of law, the board shall require its health plan insurer and any pharmacy benefit manager retained by the insurer or the board to disclose to the board any rebates the insurer or pharmacy benefit manager receives from a pharmaceutical manufacturer and any other information the insurer or pharmacy benefit manager produces with regard to spread pricing. Any information provided to the board relating to rebates and spread pricing is confidential and is not a public record subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

Renumber accordingly

Date: 1-25-07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1244

Action Taken Do not pass

Motion Made By Rep. KASPER Seconded By Rep. POTTER

Representatives	Yes	No	Representatives	Yes	No
Rep. C.B Haas Chairman	X		Rep. Bill Amerman		
Rep. Bette Grande V.P.	X		Rep. Louise Potter	X	
Rep. Randy Boehning	X		Rep. Jasper Schneider		
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. KASPER

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 2007 12:58 p.m.

Module No: HR-17-1205
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1244: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1244 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1244

Testimony on HB 1244
House Government & Veterans Affairs Committee
January 18, 2007

Mr. Chairman and Committee members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of ND.

Passing this law is totally contrary to current laws regulating the PBM industry (HB 1332, 2005 Legislative Session).

I would reference NDCC 26.1-27.1-01 the definition of

"6. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:

- a. A rebate collected by the pharmacy benefits manager which is allocated to a covered entity;
- b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
- c. A pharmacy network fee; and
- d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function."

That section goes on to say in NDCC 26.1-27.1-06 for Examination of insurer-covered entity:

"1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the **payment received by the pharmacy benefits manager** which the covered entity received from the pharmacy benefits manager has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.

2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the **payment received by the pharmacy benefits manager** received under any contract with a pharmacy benefits manager and shall describe the manner in which the **payment received by the pharmacy benefits manager** is applied toward reducing rates or is distributed to covered individuals.

3. Any information disclosed to the commissioner under this section **is considered a trade secret** under chapter 47-25.1." (emphasis added)

This bill will make this information public record. Because of contracts between the insurer and the PBM and contracts between the PBM and the drug manufacturer, proprietary agreements would make this law impossible to comply, thus resulting in preclusion of PBM's entering into contracts with NDPERS. I can't speak for other PBM's or other insurers, but I can say that if this bill passes it is extremely doubtful that BCBSND could provide PERS coverage at the conclusion of this contract period.

While this is a policy decision that you must make, please be aware of the consequences that this decision may have upon the employees of this state and political subdivisions. There is no question in my mind that if this bill passes, the cost of your health insurance plan will increase and the ability to offer a drug plan through a PBM may be very limited.

I am also including a resolution passed on January 8, 2007, by the American Legislative Exchange Council, ALEC, an organization that includes membership by many ND legislators. That resolution goes directly at this issue. They recognize that disclosure of this information will hurt the consumer. They categorically oppose "proposals that would mandate contract provisions or establish legal relationships or obligations between PBM's and their clients that require disclosure of private PBM contract terms that contain highly competitive, proprietary or trade secret information:.."

Mr. Chairman and committee members, that is exactly what this bill will do. I urge you to defeat this bill.



Resolution Opposing Government Mandated Disclosure of Proprietary, Trade Secret Information

Summary

A resolution in opposition to recent efforts by some state legislatures to mandate that Pharmacy Benefit Managers (PBMs) disclose competitive, proprietary, and trade secret information to their clients and other entities. The Federal Trade Commission (FTC) and other federal government agencies have determined that PBMs have successfully helped employers, health plans and other healthcare purchasers significantly reduce their drug costs. The FTC has determined that government-mandated disclosures of proprietary information would undermine the vigorous competition in the marketplace that has enabled PBMs to continue to control drug costs for their clients.

WHEREAS, vigorous competition leads to market innovations and increased efficiency in all economic sectors; and

WHEREAS, the cost structures which underlie market innovations are carefully guarded as proprietary trade secret information; and

WHEREAS, the contract is the fundamental basis for doing business in the United States and often contains proprietary business information; and

WHEREAS, the confidentiality and sanctity of private contracts give businesses protections and provide incentives to offer highly competitive and innovative services and contract terms; and

WHEREAS, pharmacy benefit managers (PBMs) enter into contracts to manage the pharmacy benefits of clients who are sophisticated purchasers of health care, including health plans, insurers, major employers, unions, and governmental agencies; and

WHEREAS, the Federal Trade Commission (FTC) has found competition between PBMs for contracts with sophisticated health plan sponsors to be "vigorous;" and

WHEREAS, the General Accounting Office (GAO), Congressional Budget Office (CBO) and Federal Trade Commission (FTC) have issued reports documenting how PBMs successfully have worked to hold down drug costs; and

