

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1366

2007 HOUSE HUMAN SERVICES

HB 1366

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1366

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2895

Committee Clerk Signature
---------------------------

Minutes:

**Chairman Price:** We will open the hearing on HB 1366.

**Representative George Keiser, District 47:** This is an important bill to both parties for providing prescriptions to the residence of the state. It would be a pharmacy manage benefit plan. It would allow them to give 90 days of meds for 1 co pay instead of 30 days, and pay a co pay each time. The pharmacist at times is the only health care in the community.

**Representative Jim Kasper, District 46:** We had 7 meetings and nothing really came out. Blue Cross Blue Shield does own there own PBM. PBM have a competitive advantage. The current plan now is only 30 supplies and not a 90 day supply.

**Senator Nick Hacker, District 42:** Just a reminder that the people in the rural areas need our support and this would be an advantage to them.

**Dan Churchill, testifying for the ND Pharmacist's association:** See attached testimony. PBM forces people to use mail order pharmacies. There is more profit if you own PBM.

**Rod St. Aubyn, representing Blue Cross, Blue Shield:** See attached I am opposed to the bill. Blue Cross plans are independent. We can sell only to ND. Blue Cross owns 5.2% of their PBM. Blue Cross does not show a profit with their PBM. I dispute this would be helping the consumer. It limits where you can go.

**Pat Ward, with MED CO:** We learned PBM structure is very complicated. The Statute passed is working. It is an issue of consumer choice. I urge you to leave this alone. PBM always make this more competitive.

**Peter Hardy, Vice President of MED CO Health Solutions Inc:** the question would be if there is a benefit? It should be up to the payer to make the decision. Some have limited dollars and make most efficient use of their dollars. It is cheaper to use mail service than average pharmacy. It is a large saving to companies to do mail order. Why would some employers want to have an incentive for mail order, because it saves money. Employers encourage employees to use mail order as a savings. It is a consumer benefit as well as the payer. There is nothing in here that says pharmacies take the same rate. Will they all be filled at a higher retail rate or lower mail service rate? Retail pharmacies fill 80% of the prescriptions, but mail order is growing. You can call toll free 24-7 for prescriptions from the privacy of your home. We maintain a data base no matter where you fill. This language was similar in the bill last session. The difference is price (AWP discount). CMS published paper looked at what we spend on drugs. In 2005 data showed 5.5% decrease and that is due to increase of mail service. Do we really want to take away the ability of the payer to have savings on prescriptions drugs? Some of the larger companies showed a tremendous savings after having gone to this type of program. Attached is federal information.

**Robert Harms Caremark, RX Inc.:** See attached testimony along with letter.

**Michael Harrold, with Express Scripts:** I am against the bill

**Chairman Price:** Anyone else in favor of HB 1366? Anyone in opposition of HB 1366? If not we will close the hearing on HB 1366

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1366

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: could not hear minutes

Committee Clerk Signature

*Judy Schrock*

Minutes:

**Chairman Price:** Let's take out HB 1366 and take action on the bill.

**Representative Weisz:** I move a do not pass, **Representative Schneider** seconded the motion.

**Chairman Price:** asks for discussion on the bill, not hearing any we will take the vote with 8 yeas, 4 nays, and 0 absent. **Representative Schneider** will carry the bill to the floor.

Date: 2/7  
 Roll Call Vote #: 1

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

House HUMAN SERVICES HB 1366 Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Weisz Seconded By Rep. Schneider

Representatives		Yes	No	Representatives		Yes	No
Clara Sue Price - Chairman				Kari L Conrad			
Vonnie Pietsch - Vice Chairman			<input checked="" type="checkbox"/>	Lee Kaldor	<input checked="" type="checkbox"/>		
Chuck Damschen	<input checked="" type="checkbox"/>			Louise Potter			<input checked="" type="checkbox"/>
Patrick R. Hatlestad	<input checked="" type="checkbox"/>			Jasper Schneider	<input checked="" type="checkbox"/>		
Curt Hofstad			<input checked="" type="checkbox"/>				
Todd Porter	<input checked="" type="checkbox"/>						
Gerry Uglem			<input checked="" type="checkbox"/>				
Robin Weisz	<input checked="" type="checkbox"/>						

Total (Yes) 8 "Click here to type Yes Vote" No 4 "Click here to type No Vote"

Absent 0

Floor Assignment Rep. Schneider

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

**REPORT OF STANDING COMMITTEE (410)**  
February 7, 2007 12:18 p.m.

**Module No: HR-26-2368**  
**Carrier: Schneider**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1366: Human Services Committee (Rep. Price, Chairman) recommends DO NOT PASS (8 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1366 was placed on the Eleventh order on the calendar.**

2007 SENATE HUMAN SERVICES

HB 1366



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1366

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 3-14-07

Recorder Job Number: 5051, 5084

Committee Clerk Signature

*Mary K. Monson*

Minutes:

JOB # 5051

Roll was taken and all members were present.

Chairman Judy Lee opened the public hearing on HB 1366.

Representative George Keiser from District 47 introduced and testified in support of this bill.

From a policy standpoint they need to make a determination to what degree they want to support our local pharmacists. In many rural communities there aren't local pharmacists any more. Even in our more urban areas there are fewer pharmacists. They do provide a very important service to the people of our state. This bill aims to create a level playing field for our local pharmacists. It will not affect people covered by Medicare Part D or ERISA. It deals with people who are not with a large company so they are not able to be self insured. After the bill was heard on the House side, BC/BS said they already allow a 90 day prescription for all providers. This bill just says for those programs we do control make it a level playing field. Our local pharmacists would like to fill as many prescriptions as possible.

Senator Dever asked if Representative Keiser could explain how the PBM's (Pharmacy

Benefits Managers) and the whole process works. He wants to know how pharmacists are treated differently. Is it a contractual thing?

Representative Keiser said PBM's provide a very good service. It was a clearinghouse to receive approval. Is this person qualified under this plan? As a control mechanism it was initiated so that the pharmacist would call the PBM and say is this individual covered under BC/BS through the state. The PBM would say yes he is and there might be some limits in the plan that the pharmacist would have to address in filling the prescription, but it was more of a paper management system rather than an electronic management system. You would get prior approval for filling prescriptions. PBM systems have evolved from that. Today they are actually writing formularies, negotiating prices and managing the delivery of pharmaceutical products mail order and in other forms. It has become a principle part of their business line. As a result they are motivated to maximize that part of their business. It does potentially directly or indirectly cut out the activity of the local pharmacist. If everyone in our state goes mail order, there will not be pharmacists and there will not be a need for pharmacists. They could sell some of these items but they certainly wouldn't need to go to school and spend five years getting a degree.

Senator Lee said she always tries to draw a parallel with an industry she is familiar with. In the mortgage lending business a parallel would be, if they would try to limit people from going to website lenders. She finds website lenders to be extremely frustrating and occasionally incompetent. She would love it if all the real estate companies would have to charge the same brokerage fee even though anti-trust laws at the federal level would probably not agree with it. She asked why that would be different.

Representative Keiser said banks get into the real estate business and they have insurance businesses already. They have all of the financial side covered. They get into the real estate, they get into the mortgage, they get into everything. Is it good policy and should we address it.? They could come to him and say, "Look, if you do everything with us we're going to give

you a significantly lower rate." The question is, is that good policy? Maybe it is because if it is they will be happy to do it.

Senator Lee asked if it would be good for the consumer.

Representative Keiser said that is the policy question.

Senator Lee said on the one hand she does her business with local lenders because that is who does business with her. She believes in doing business with her local business people. She has great frustration with the way some of those web based lending institutions do business. There is a generation that believes that if it's on the web it must be true. She agrees with doing business locally but she wonders if we are interfering with the ability of the consumer to make some choices that help their pocketbooks with co-pays and private pays.

Representative Keiser said one concern he has is how you go off the books. How can you treat money? A more direct analogy is they just heard in the House the Walmart banking bill which the Senate had heard. Should retail stores be allowed to own banks and put them in their store and use loss leaders within their store to offset, have a higher interest rate but offset with a loss leader. The Senate has taken a policy decision on that and the House is currently deliberating that. In this case if I own a mail order catalog, if a PBM owns a mail order catalog or an insurance company owns part of a PBM and part of a mail order catalog how do the dollars flow? When I get ready to write premiums do those dollars come in as profits to the health insurance company or are they kept offline so that when he goes to the insurance commissioner he gets a bigger rate increase on his premium because this is a free standing separate corporation over here. Although I own it, how do I move those dollars? How do I account for the profitability or loss of the transactions? That is a concern that we have here.

Senator Lee said if she has two businesses she cannot deduct the loss of one against the profits of another.

Representative Keiser said he thinks you can with good financial expertise. He said he does it all the time. He competes with the state printing shop here in the building. They charge a fee to the state printing shop per square foot. It has no correlation with what the real cost is. They don't have an accounting department. That is up in OMB. They don't have any legal fees. That's going to be administratively handled. They don't have to provide a lunchroom. They don't have to provide parking spaces. They have one but they don't have to pay for it so they can say our cost to operate is \$7.00 because they can share the administration cost when you have useful ownership and you don't see it. Again it comes back to the policy. It comes back to this bill. Do we want to protect our local pharmacists and keep them in business or do we want to not protect them? He believes it is good policy to have our pharmacists in the state.

Senator Dever asked if the pharmacists are asking for this bill.

Representative Keiser said they will be testifying and he thinks they support it very strongly. This is the one area dealing with the PBM's that repeatedly surfaced during the interim. Pharmacists did not come to him and ask him to introduce the bill.

Representative Jim Kasper from District 46 said the bottom line of the bill is in prescription drug management the controlling entity is the PBM in almost all cases. The PBM contracts with local pharmacists for reimbursement rate. There are a number of PBM's in North Dakota who contract with pharmacists in North Dakota and the contracting rates could be different for drugs and for the different PBM's. That is good competition. Where we have a problem in the competitive market in North Dakota is in the amount of the prescription the individual can order or purchase from the local pharmacist compared to the mail order. If the consumer buys from the local pharmacist he has to pay three co-pays, whereas through mail order he has to pay only one co-pay. This bill simply says whatever a PBM will offer a consumer on a mail order purchase you have to also allow the local pharmacist to have the same opportunity. It doesn't

get into costs. To compare it to the real estate, if you in the real estate had to compete with other realtors who were able to be 2/3 lower in price than what you are and you would not be able to lower your price or not control your price because it was set by some outside entity, you couldn't stay in business very long.

Senator Lee said they do compete with some people who do charge significantly less than they do.

Dan Churchill testified on behalf of the North Dakota Pharmacist's Association. See attachment # 1.

Senator Dever asked about his comment that he has had a number of patients that have had no choice but to get their prescriptions from their PBM's mail order pharmacy. Are PBM's the supplier and the competitor of local pharmacies?

Mr. Churchill said that is so but they don't think it is right when people are forced, incentivized or economically forced to order from mail order companies. BC/BS of North Dakota doesn't do that. They allow their people to choose where to fill their prescriptions. North Dakota Pharmacists appreciate that. It helps them care for their patients and BC of North Dakota probably has a healthier membership because of that.

Senator Dever asked if some insurance plans require mail order.

Mr. Churchill said that some of them force their beneficiaries to go through mail order. Some plans say for the first two months you can go to your local pharmacy and after that you must go to mail order. Some of them will allow you to continue to go to the local pharmacy but will only allow you to get a one month supply through the local pharmacy and a three month supply through the mail order pharmacy.

John Olson, representing the North Dakota Pharmacy Services Corporation, spoke in full support of the bill. The North Dakota Pharmacy Services Corporation works closely with the Pharmacists Association and is comprised mainly of retail pharmacists.

Kyle Schwandt, a Pharm D student from the NDSU College of Pharmacy, spoke in support of the bill. See attachment # 2.

Senator Erbele asked if Kyle knew why the restriction was put in place.

Kyle said he didn't know.

Senator Warner asked if Kyle knew of any insurance companies that required only mail order.

Kyle said he was not aware of any.

Opposition: -

Pat Ward with Medco Health Solutions spoke in opposition to the bill. See attachment # 3.

Rod St. Aubyn, representing BC/BS of North Dakota, strongly opposed HB 1366. See attachment # 4. He disagreed with prior testimony that it would not affect PERS and Blue Cross. He said it definitely would. He stated that the PBM's are very competitive. When Blue Cross was looking for a PBM they put it out for bids and a number of PBMs bid on it. He addressed some of the previously made comments (audio 55:20). He referred to George Keiser saying the PBM's write formularies. The health plan is what determines the formulary for the health plan. In BCBS of North Dakota the formulary committee is made up of ND pharmacists and ND physicians. A rep from the PBM sits in on it for technical expertise and information but it is the formulary committee that determines which drugs are payable and which drugs are on the formulary and which are not. The PBM doesn't determine that. There was a comment made about how do profits flow to another insurance company if they own their own PBM and/ or mail order. All of their records are reviewed by the insurance commissioner's office. If there are any profits that come back from the PBM it is collected in

their audits so the insurance commissioner has full access to that information. He suggested asking the attorney general's office if the bill will affect Medicare.

Senator Lee asked if Mr. St. Aubin feels there is confusion on the part of the public if they are part of a self funded plan or not.

Mr. St. Aubin said that is the case. Most people don't know. Typically the self funded plans are the larger employers, school districts, city government and large entities that are not part of PERS.

Bob Harms spoke on behalf of Caremark, Rx Inc. in opposition to HB 1366. See attachment # 5.

Senator Lee asked if any states have legislation of this sort.

Mr. Harms said SD, ME, Washington DC, and one other state have looked at PBM legislation and none of them include restrictions on mail order such as what is being considered here.

Todd Kranda spoke on behalf of Express Scripts. He spoke to oppose HB 1366.

Neutral: - none

Michael Mullen, the Assistant Attorney General, was asked to step to the podium to take questions. He wanted to go on record as stating the Attorney General is neutral on this issue. For the record he also stated he does not have any vested interest in this bill.

Senator Lee asked if he would see any conflict between this bill and Medicare Part D.

Mr. Mullen said in his view the federal legislation that established the Medicare Part D contains a provision that he thinks explicitly exempts the Medicare Part D plans from state laws regulating prescription drugs. He cited US Code 42 1395W-26B3 that states Medicare Part D regulations supersede any state law regulating dispensing of prescription drugs.

Senator Lee asked about restraint of trade and federal and state anti-trust issues.

Mr. Mullen said there is a line of decisions of the US Supreme Court which have held that state laws that attempt to restrict the marketplace from out of state competitors violate the commerce clause. If the intent of a law is economic protectionism it is essentially invalid. He stated different cases (audio 70:35) of this law. There is an exception to this law and that is when the state is the consumer of the product. State entities have the first right of refusal on contracts for the state.

Senator Lee commented that her understanding is that it does apply to self funded plans. She asked if there were other legal points that should be considered.

Mr. Mullen said the based on a decision by US Supreme Court and the Eighth Circuit Court of Appeals which covers our area this law could not be applied to self funded plans.

Chairman Lee closed the hearing on HB 1366.

JOB # 5084

Chairman Judy Lee opened discussion on HB 1366. She mentioned that this would be in conflict with Medicare Plan D and that it doesn't apply to self funded plans. The commerce clause states that you cannot restrict out of state competitors. Based on federal court ruling it is economic protectionism. Based on a decision by US Supreme Court and the Eighth Circuit Court of Appeals the self funded plans are preempted. The PBM's wouldn't be able to give different dispensing fees which wouldn't enhance the service for the rural areas.

Senator Erbele moved a do not pass on this bill.

Senator Pomeroy seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Warner



Date: 3-14-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1366

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Sen. Erbele Seconded By Sen. Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair /	✓		Senator Jim Pomeroy 2	✓	
Senator Dick Dever	✓		Senator John M. Warner	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Warner

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

**REPORT OF STANDING COMMITTEE (410)**  
March 15, 2007 1:43 p.m.

**Module No: SR-49-5436**  
**Carrier: Warner**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1366: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1366 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1366

**Testimony on HB 1366**  
**House Human Services Committee**  
**February 6, 2007**

Madam Chair and Committee Members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota. We are opposed to HB 1366. Though it does not directly affect our company, since we already allow participating pharmacies the same 90-day prescription option as mail order pharmacies, the bill does preclude our company from establishing a preferred provider option in the pharmacy area. Because this bill will only affect the fully insured plans, 50% of our business (self-funded plans) could still have this option. In addition, this law will not affect Medicare Part D plans. In fact, the Federal government recognized this option by specifically providing it as an option.

A question was asked during a joint meeting of the Budget Committees on Human Services and Health Care on September 12 & 13, 2006 about the number of prescriptions processed by the different types of payers. Mr. Howard Anderson, Executive Director of the ND Board of Pharmacy responded with the following research:

*"I did a quick survey of a few of our pharmacies and can say with reasonable accuracy that the percent of prescriptions filled by North Dakota pharmacies fall close to the following.*

*Cash 8%*  
*Medicaid 6%*  
*BCBS of ND 25%*  
*Medicare Part D 40%*  
*All other 3rd party 21%*

*There may be some variances in local areas, but this should hit pretty close to a mean."*

As you can see, by passing this bill, you will be unfairly preventing a contracting option on just a minority of health plans, reducing the ability to save members' prescription drug costs. This bill will interfere with the contracting rights of private companies. Because of the potential negative impact on ND citizens, we urge you to defeat HB 1366.

02/06/2006

House Human Services Committee  
Testimony in regards to HB 1366

Thank you ladies and gentlemen. My name is Dan Churchill and I am testifying today on behalf of the North Dakota pharmacist's association and as a community pharmacist here in Bismarck.

The intention of bill 1366 is to level the playing field for community pharmacies in the state of North Dakota and also to provide equal access for the citizens of North Dakota that are seeking pharmacy services.

Under current law pharmacy benefits managers, or PBMs, are allowed to force and/or restrict covered individuals use of the pharmacy of their choice, even if the pharmacy is a willing provider. Patients are sometimes charged a higher copay by their insurance at a local community pharmacy than they have to pay at a national mail-order pharmacy (which is often times owned by the PBM). Patients are sometimes restricted to a one month supply of maintenance medications at local pharmacies but allowed by their plan to receive a 3 month supply from mail-order. Often times PBMs will force individuals to receive all their regular medications from mail-order and only allow local pharmacies to fill immediate care and emergency medications. These practices serve to restrict choice for the citizens of North Dakota and also hamper the community pharmacist's ability to properly care for our patients. I personally have had a number of patients that have had no choice but to get their prescriptions from their PBMs mail-order pharmacy even though they were pleased with the care and service that they received from our pharmacy. When patients are forced to get prescriptions from more than one pharmacy it increases risks for drug interactions, allergic reactions, and poorer health outcomes. This is especially true for the medicare population who are more likely to have multiple medications, and quite possibly could have diminished ability to remember and understand all their medications. For these people, having a community pharmacist to rely upon for consultation and information is invaluable and sometimes lifesaving.

Ladies and gentlemen, if you have ever had a prescription filled, or ever sought the advice of a pharmacist, you know that pharmacy services are not a commodity to be bought and sold. A patient's relationship with his or her pharmacist can be very personal and can and does lead to better health outcomes. On behalf of the North Dakota Pharmacist's association I ask you to allow North Dakota citizen's to access the pharmacy of their choice, and allow the willing pharmacies of North Dakota an equal footing with the mail-order pharmacies. I ask you to issue a DO-PASS recommendation on HB 1366.

Thank You  
Dan Churchill Pharm.D. R.Ph.

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
Washington, DC 20580



Office of Policy Planning  
Bureau of Economics  
Bureau of Competition

March 8, 2005

Senator Richard L. Brown  
North Dakota Senate  
State Capitol  
600 East Boulevard  
Bismark, ND 58505-0360

Dear Senator Brown:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics<sup>1</sup> are pleased to respond to your requests for comments on the likely competitive effects of North Dakota House Bill 1332 ("HB 1332" or the "Bill") that would regulate the contractual relationships between pharmacy benefit managers ("PBMs") and "covered entities" – such as health plans and health insurers – and pharmacies.<sup>2</sup>

<sup>1</sup> This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission (Commission) or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

<sup>2</sup> HB 1332 defines a covered entity as a "nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in a capacity of provider of health coverage; or an employer, a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state." HB 1332 § 25.1-27.1-01 (1). Covered entities do not include self-funded plans exempt from state regulation pursuant to ERISA, health plans "issued for federal employees," or health plans that provide "coverage only for accidental injury, specified disease, hospital indemnity, medicare supplement, disability income, long-term care, or other limited-benefit health insurance policies] or contrac[s]." *Id.*

Senator Richard L. Brown

March 8, 2005

Page 2 of 8

In your letter dated January 19, 2005, you asked us to analyze the competitive implications of HB 1332 and discuss whether it "will likely result in the increased cost of pharmaceutical care for consumers." We believe that HB 1332, if enacted, may have the unintended consequence of increasing the price of pharmaceuticals and ultimately to decrease the number of North Dakotans with insurance coverage for pharmaceuticals. Specifically, we believe that HB 1332 may limit a PBM's ability to guide consumers to lower-cost pharmacies and would prohibit switching consumers to certain lower-priced drugs.<sup>1</sup>

### Interest and Experience of the Federal Trade Commission

The Federal Trade Commission (Commission) is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>4</sup> Pursuant to this statutory mandate, the Commission seeks to identify business practices and regulations that impede competition without offering countervailing benefits to consumers. For several decades, the Commission and its staff have investigated the competitive effects of restrictions on the business practices of health care providers.<sup>5</sup> The Commission has brought numerous enforcement actions against entities involved in the pharmaceutical industry,<sup>6</sup> and the Commission and its staff have issued reports and studies regarding various aspects of the pharmaceutical industry.<sup>7</sup>

The Commission also has extensive recent experience with PBMs. In 2004, Commission staff commented on proposed Rhode Island legislation that would have affected a PBM's ability to contract with pharmacies<sup>8</sup> and on proposed California legislation that would have required

<sup>1</sup> Although our comment is addressed only to these provisions, the Bill also regulates PBMs in other ways. See note 14, *infra*. We note that HB 1332 has been amended once by eliminating a requirement that PBMs act as fiduciaries to covered entities with which they contract and reducing the scope of a PBM's mandatory disclosure of financial information. These amendments eliminated other provisions that likely would have produced adverse competitive effects.

<sup>4</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>5</sup> See Federal Trade Commission, *FTC Antitrust Actions in Health Care Services and Products* at <http://www.ftc.gov/bc/bcaupdate031024.pdf>.

<sup>6</sup> See Federal Trade Commission, *FTC Antitrust Actions in Pharmaceutical Services and Products*, at <http://www.ftc.gov/bc/0310update.pdf>.

<sup>7</sup> See Federal Trade Commission, *GENERIC DRUG ENTRY PRIOR TO PATENT EXPIRATION* (July 2002); David Reiffen and Michael R. Ward, *GENERIC DRUG INDUSTRY DYNAMICS*, Federal Trade Commission Bureau of Economics Working Paper No. 248 (Feb. 2002), at <http://www.ftc.gov/bcecon/work.htm>; Roy Levy, *THE PHARMACEUTICAL INDUSTRY: COMPETITIVE AND ANTITRUST ISSUES IN AN ENVIRONMENT OF CHANGE*, Federal Trade Commission Bureau of Economics Staff Report (Mar. 1999), at <http://www.ftc.gov/reports/pharmaceutical/generep.pdf>.

<sup>8</sup> Letter from FTC staff to Patrick C. Lynch, Attorney General and Juan M. Picardó, Deputy Senate Majority

