



MISSOURI HOUSE OF REPRESENTATIVES
WITNESS APPEARANCE FORM

BILL NUMBER: HB 834		DATE: 2/22/2021	
COMMITTEE: Health and Mental Health Policy			
TESTIFYING: <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: DAVID OVERFELT		PHONE NUMBER: 573-636-2524	
REPRESENTING: MISSOURI RETAILERS ASSOCIATION		TITLE: PRESIDENT	
ADDRESS: 618 E CAPITOL			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL: dave@moretailers.com	ATTENDANCE: Written	SUBMIT DATE: 2/22/2021 11:07 AM	

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We support NACD's statement: On behalf of our member companies operating in the State of Missouri, the National Association of Chain Drug Stores supports HB 834's inclusion of an appeals process by which pharmacies can resolve disputes of Maximum Allowable Cost pricing. This important provision, found on page 6, line 53-56, will help ensure pharmacies are not reimbursed below cost.



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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: JORGEN SCHLEMEIER		PHONE NUMBER: 573-634-4876	
REPRESENTING: MISSOURI PHARMACY ASSOCIATION		TITLE:	
ADDRESS: 213 EAST CAPITOL AVENUE			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM	
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WITNESS NAME		
BUSINESS/ORGANIZATION:		
WITNESS NAME: LISA UMFLEET		PHONE NUMBER: 573-431-6677
BUSINESS/ORGANIZATION NAME: PARKLAND HEALTH MART PHARMACY		TITLE: PHARMACY OWNER
ADDRESS: 1131 NORTH DESLOGE DRIVE		
CITY: DESLOGE		STATE: MO
		ZIP: 63601
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: SHANTEL DOOLING		PHONE NUMBER: 573-353-3828	
REPRESENTING: MISSOURI STATE MEDICAL ASSOCIATION		TITLE:	
ADDRESS: 113 MADISON STREET			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM	
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: STEPHEN NITTLER		PHONE NUMBER: 573-634-3425	
REPRESENTING: MISSOURI ASSOCIATION OF OSTEOPATHIC PHYSICIANS AND SURGEONS (MAOPS)		TITLE: REGISTERED LOBBYIST	
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CITY: JEFFERSON CITY		STATE: MO	ZIP: 65201
EMAIL: stephen@hahnodaniel.com	ATTENDANCE: In-Person	SUBMIT DATE: 2/22/2021 11:27 AM	
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We are in support of HB 834 because it will help physicians prescribe medications and treatments they feel are necessary for their patients, without the undue burden that PBMs often present.



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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: BRIAN GRACE		PHONE NUMBER: 573-230-9549	
REPRESENTING: CIGNA		TITLE:	
ADDRESS: 117 MADISON STREET			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65201
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM	
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: CHRIS LIESE		PHONE NUMBER: 314-495-6159	
REPRESENTING: CVS		TITLE:	
ADDRESS: 730 WEST MAIN			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM	
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: CHRIS LONG		PHONE NUMBER: 573-680-9175	
REPRESENTING: ST. LOUIS AREA BUSINESS HEALTH COALITION		TITLE:	
ADDRESS: 1319 FRIENDSHIP ROAD			
CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM	

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WITNESS NAME		
REGISTERED LOBBYIST:		
WITNESS NAME: SAM HALLEMEIER		PHONE NUMBER: 202-579-7647
REPRESENTING: PCMA		TITLE: DIRECTOR STATE AFFAIRS
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CITY: WASHINGTON, DC	STATE: DC	ZIP: 20004
EMAIL: shallemeier@pcmanet.org	ATTENDANCE: Written	SUBMIT DATE: 2/22/2021 8:27 AM

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February 22nd, 2021
 The Honorable Dr. Mike Stevens
 201 W Capitol Ave
 Hearing Room 7
 Jefferson City, MO 65101
 RE: HB 834 Payments For Prescription Drugs

Dear Chair Stevens, Members of the Committee,
 On behalf of the Pharmaceutical Care Management Association (PCMA), we greatly appreciate the opportunity to provide comments on HB 834 relating to Pharmacy Benefit Managers. We respectfully oppose HB 834 and request the committee to consider our comments in the interest of payers and patients. PCMA is the national trade association representing America's Pharmacy Benefit Managers (PBM), which administer prescription drug plans for more than 266 million Americans with health coverage provided through Fortune 500 employers, health insurance plans, labor unions, and Medicare Part D. PBMs are engaged by clients including health insurers, government agencies, unions, school districts, and large and small employers, to manage pharmacy benefits pursuant to health insurance benefits and contracts. PBMs are projected to save Missouri payers \$19 billion through the next decade thanks to tools such as negotiating price discounts with drug manufacturers, establishing pharmacy networks and disease management and adherence programs. During the current public health emergency, nearly every entity in the prescription drug supply chain has been confronted with unique challenges to ensure patients are able to access prescription drugs reliable and affordably. PCMA is concerned that HB 834 will adversely affect these goals.

Page 4 (Lines 45-48) PBM Fiduciary Duty
 Federal law defines the term "fiduciary" as a person who (i) exercises any discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets or (ii) has any discretionary authority or discretionary responsibility in the administration of such plan.¹ PBMs have no such control or authority over a plan's management or assets. The concept of a fiduciary duty related to a PBM's contractual relationship with its clients was first raised and considered by federal courts in the early 2000s. The U.S. Supreme Court has ruled that a person is a fiduciary for an ERISA plan only "to the extent" a person has or exercises such discretionary authority or control on behalf of a plan.² Following this decision, multiple federal courts have ruled that the PBM was not acting in a fiduciary capacity in managing its PBM-related services¹ 29 U.S.C. § 1002(21)(A)² Pegram, 530 U.S. at 223, 120 S. Ct. 2143. (e.g., negotiating with drug manufacturers or retail pharmacies or managing its formulary), but rather managing its own business which did not involve the discretionary control of plan assets.³ The imposition of a fiduciary duty may reduce the flexibility that a plan sponsor has with regards to structuring their financial arrangement with their PBM and could lead to one-size-fits-all solutions. There may be only one way of contracting that would meet the definition of a fiduciary without some potential for incurring legal liability. Additionally, it could restrict payers' ability to uniquely design their benefit to meet their beneficiaries' specific needs while implementing ways to provide cost savings, including formulary preferences, exclusions, and utilization management

techniques. In fact, research shows that a fiduciary mandate in Missouri could cost payers and patients \$1.2 billion over the next ten years. The reality of the marketplace is that one-size-fits-all plan designs would not work for everyone because not all payers have the same level of economic resources or the same size and type of patient populations.

Page 6 (Lines 53-60) Guaranteed Reimbursements This provision is nothing more than an automatic cost driver that will increase prescription drug prices for patients and payers. The bill states that a pharmacy must be reimbursed to cover the pharmacies actual cost to obtain a certain prescription drug. The market for generic drugs is incredibly dynamic and is akin to a commodities market wherein prices fluctuate daily. Pharmacies are reimbursed for generic drugs via maximum allowable cost ("MAC") lists. To determine a fair reimbursement for generic drugs, PBMs survey market data to calculate the average cost for those drugs including information from nationally recognized pricing reference services, wholesalers and drug manufacturers. The resulting reimbursement is established using that estimated market price while balancing the contractual requirements established by each unique pharmacy and plan sponsor. MAC lists are important because network pharmacies purchase their supply of prescription drugs at different prices and terms from various wholesalers. MAC lists encourage pharmacies to buy their inventory as efficiently as possible and provide a reasonable, market based reimbursement to provide patients and payers significant savings. Moreover, PSAs (Pharmacy Services Administrative Organizations), the largest of which are owned by wholesalers and contract with PBMs on behalf of independent pharmacies use "off-invoice" discounting with pharmacies they are selling to such as purchasing volume discounts and others. These price adjustments are not typically included on the pharmacy's invoice and include various types of rebates and price concessions. PBMs are not involved in these transactions and have no insight into the prices that pharmacies pay. As a result, pharmacies may buy a drug cheaper than their submitted invoice actually reflects. HB 834 would end the use of MAC lists as pharmacies are no longer encouraged to buy their inventory as efficiently as possible due to guaranteed reimbursement from the PBMs and thus increasing the costs of prescription drugs for patients.

Page 3 (Lines 11-14) Pharmacy Networks HB 834 also puts government in the middle of mutually agreed upon contracts and plan designs aimed at maintaining affordable pharmacy networks for patients. Health plans design networks of 3 See Chicago District Council of Carpenters Welfare Fund. v. Caremark, 474 F.3d 463, (7th Cir. 2007); see also Moeckel v. Caremark, Inc., 622 independent, chain, mail-order, and specialty pharmacies to provide patients with access to a range of high-quality pharmacies, while balancing savings for patients and payers. To achieve this goal, PBMs require pharmacies to compete on service, price, convenience, and quality to be included in certain preferred networks. Pharmacies that agree to participate in such arrangements are designated "preferred" and become members of that network. Today, nearly half of all employer sponsored plans use preferred networks and this bill would essentially strip away the ability of payers to exercise these cost control measures. Proponents of the bill will claim that these types of arrangements hurt pharmacy access. On the contrary, patients have access to more pharmacies than ever before. In fact, the number of independent pharmacies in Missouri has increased from 482 to 502 in the last ten years.

Page 4 (Lines 24-27) Claim Adjudication Fees This language would prevent a PBM from charging a pharmacy any fee related to a claim that is not known at the time of the claim's adjudication. This is problematic as transaction fees while not always apparent when the claim is processed, are instead noted in advance in the contract, and would appear after the claim is adjudicated on the remittance advice. PCMA suggests retaining the stricken language that starts on line 26, "...or charges for administering a health plan benefit." **Page 4 (Line 28-31): Applicability to Medicare Part D** The deletion of this language suggests that Medicare Part D and self-insured ERISA plans should no longer be preempted by federal law. The U.S. Supreme Court issued a decision on December 10, 2020 in *Rutledge v. PCMA* that reaffirmed that an Arkansas law in question could not supersede Medicare Part D. Further, the Court in its ruling limited the removal of ERISA preemption to only issues of rate regulation, like Maximum Allowable Cost laws, as was the focus of the Arkansas law. The Court did not say that ERISA plans should be subject to other types of PBM regulation. By deleting this provision, the bill appears to inappropriately apply the various PBM provisions in HB 834 to ERISA plans.

Page 3 (Section 378.387. 1.) Definition of Covered Person The definition for "covered person" in HB 834 is redefined to include any individual who receives prescription drug coverage through a PBM. The existing statute only allows for applicability for insured marketplace participants. The proposed definition would broaden the provisions of the bill to patients covered under programs that are preempted by federal law, such as Medicare Part D and ERISA. PCMA suggests the definition remain as what is in statute, limiting the bill to insured participants only.

Page 4 (Line 36-40) Generics vs. Authorized Generics This language would define and apply the term "generic" to mean any "authorized generic drug". Authorized generic drugs are brands without a rebate offered, and they are not generics. PBMs promote competition in the prescription drug marketplace by negotiating rebates as well as favoring generics to contain costs for patients and payors. Treating authorized generics as generics, which they are not, undermines this competition and raises costs as authorized generics have a higher list price than generic competitors. PCMA requests that this section be struck as it incorrectly

defines "generics" and "authorized generic drugs" to be the same as well raises costs.4 Quest
Analytics analysis of NCPDP dataQ data, 2019.In the interest of Missourian patients and payers, it is for
these problematic provisions noted above that we must respectfully oppose HB 834. Given the unique
environment millions of Missourians citizens and thousands of plan sponsors find themselves in, now
is not the time to increase the cost of providing reliable and affordable access to prescription drugs.We
stand ready to work with you and your colleagues in the General Assembly and I am happy to provide
any additional information or answer any questions you may have.Respectfully, Sam
Hallemeier Director, State Affairs, PCMA



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WITNESS NAME		
REGISTERED LOBBYIST:		
WITNESS NAME: SHANNON COOPER		PHONE NUMBER: 660-890-1432
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		ZIP: 65101
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WITNESS NAME		
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WITNESS NAME: TRACY KING		PHONE NUMBER: 573-353-9576
REPRESENTING: MISSOURI INSURANCE COALITION		TITLE:
ADDRESS:		
CITY:		STATE: ZIP:
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/22/2021 12:00 AM
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WITNESS NAME		
INDIVIDUAL:		
WITNESS NAME: ARNIE C. AC "HONEST-ABE" DIENOFF-STATE PUBLIC ADVO		PHONE NUMBER:
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CITY:		STATE: ZIP:
EMAIL: arniedienoff@yahoo.com	ATTENDANCE: Written	SUBMIT DATE: 2/22/2021 12:17 PM
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This is a very confusing and hard to understand Bill. This Bill needs some work and clarifying information. What are the intentions of this Bill?



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: JOEL KURZMAN		PHONE NUMBER: 847-905-0555	
BUSINESS/ORGANIZATION NAME: NATIONAL ASSOCIATION OF CHAIN DRUG STORES		TITLE: DIRECTOR, STATE GOVERNMENT AFFAIRS	
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