

TESTIMONY PRESENTED TO
THE SENATE BANKING AND INSURANCE COMMITTEE
REGARDING SENATE BILL 616 (PN 665)

BY

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My name is Daniel A. Hussar. I am a pharmacist and a professor of pharmacy at the Philadelphia College of Pharmacy at the University of the Sciences in Philadelphia. Thank you for the opportunity to present comments at this hearing on Senate Bill 616 (PN 665) that amends the Unfair Insurance Practices Act. I urge you to approve SB 616 and to support its prompt approval by the full Senate.

Many of the prescription drug benefit programs that are administered by insurance companies and pharmacy benefit managers (PBMs) are a disservice to many of the citizens of the Commonwealth and blatantly unfair to community pharmacies (both chain and independent pharmacies). SB 616 addresses certain of the unfair components of these programs.

At the present time some prescription drug benefit programs mandate that patients obtain prescriptions for certain medications from a mail-order pharmacy. In many of these programs, it is the same company that designs and administers the prescription program that owns the mail-order pharmacy to which it directs patients. Patients who wish to obtain these prescriptions from their local pharmacies are denied coverage for the cost of these prescriptions. This fragments the provision of prescription medications to patients in a manner that increases the risk of adverse reactions, drug interactions, and other drug-related problems. This represents a disservice to patients and is an unfair restriction for local pharmacies.

Many prescription programs prevent local pharmacies from dispensing more than a 30-day supply of medications that will be used for long periods of time, for which the patient pays a co-payment. However, in these same programs, mail-order pharmacies are permitted to dispense a 90-day supply, for which the patient is charged only one or two co-payments. Thus, the mail-order pharmacies have an unfair advantage over local pharmacies by being able to provide a financial incentive to patients while the local pharmacy is restricted to providing no more than a 30-day supply.

A recent letter illustrates another variation of coercive and restrictive prescription programs. The letter was sent by CVS Caremark to a patient who is a participant in one of its prescription plans. The letter identifies a particular medication and the name and address of the pharmacy (not a CVS pharmacy) from which it was obtained. The following statements are included in the letter:

“No additional fills of your prescription(s) will be covered at this location. However, when you call the phone number listed above we can help you save money and get your prescription(s) without disruption through CVS/pharmacy or CVS Caremark Mail Service Pharmacy.”

“In order to save both you and your plan money, your plan design requires that you receive long-term medications in a 90-day supply at either a CVS/pharmacy retail store or through CVS Caremark Mail Service.”

It is CVS Caremark that designs, establishes the criteria for, and administers the prescription programs it promotes to clients. It is also CVS Caremark that determines the cost to the client for the prescription program “options” it administers. Therefore, it is in a position to design a program that will bring all prescriptions for long-term medications into a pharmacy that it owns, and price this program at a level that clients will perceive to be less costly.

This situation provides a very clear example of why it is inherently wrong for the same company that designs and administers prescription programs to also own the pharmacies that patients are required to use. The National Community Pharmacists Association and many individual pharmacists have recently met with the Chairman of the Federal Trade Commission (FTC) to request that it investigate anticompetitive practices of CVS Caremark and to reconsider the merger of these two organizations that occurred in 2007. In my opinion, the unfairness of these prescription programs for both patients and local pharmacists is so egregious that the FTC should withdraw its approval of the merger and require its division into two separate companies.

The approval of SB 616 will restore the right of patients to choose the pharmacy in which they will obtain their prescriptions, rather than be required to obtain certain of their prescriptions from a mail-order pharmacy, or a pharmacy owned by or having an exclusive agreement with the company that designed and administers the program. Through SB 616, local pharmacies are also seeking the opportunity to dispense 90-day supplies of medications that they are restricted from doing now in most prescription programs.

I am aware that some opponents of SB 616 have stated that approval of this bill would prevent the use of mail-order pharmacies in prescription programs. Not only is this statement inaccurate, but it is also disingenuous coming from representatives of programs that prevent the use of local pharmacies.

Some opponents of SB 616 have tried to suggest that fewer errors are made in mail-order pharmacies than in local pharmacies. There are no studies that provide a reliable comparison of error rates in different pharmacy practice settings. If this statement is made to you, I would urge you to request the results of studies of errors that have been done in that company’s mail-order pharmacy, and to also request detailed information regarding the lawsuits pertaining to dispensing errors involving that pharmacy, including the lawsuits that were settled out of court (typically under confidential terms with no acknowledgement of wrongdoing).

Some opponents of SB 616 have also tried to suggest that the use of mail-order pharmacies is less costly than the use of local pharmacies. In my opinion, there are no studies that conclusively demonstrate this contention. There is no transparency with respect to the financial operations of mail-order pharmacies. If this issue is raised, I would urge you to request sufficiently detailed financial information for the mail-order pharmacy that would permit you to have a staff member make a reliable comparison with the costs of selected medications charged by local pharmacies. In the situations in which

mail-order pharmacies have made limited financial information available, it is selected data that can be used in a manner that will support the plan they wish to promote. The company that designs several prescription program options can establish the “best price” for the particular program from which it will obtain the greatest financial return.

With this testimony, I am enclosing copies of the following editorials that address certain of these matters in greater depth:

The Chaos of Prescription Drug Benefit Programs
A Mail-Order Myth
CVS Caremark – An Alliance that Must be Broken

Thank you for your consideration of my comments.