



April 14, 2021

The Honorable Dr. Richard Pan
Chair, Senate Committee on Health
State Capitol
Sacramento, CA 95814

Re: SB 524 – Health Care Coverage: Patient Steering- OPPOSE

Dear Chair Dr. Pan,

On behalf of the Pharmaceutical Care Management Association (PCMA), we wish to share our concerns about SB 524 and the negative impact we believe it would have on health plans and, more importantly, patients in California. Quite simply, SB 524 would impede patient access to lower cost medicines and present significant patient health care quality concerns.

As you may know, PCMA is the national trade association representing America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage provided through employers, health insurance plans, labor unions and Medicare Part D. Clients, including health insurers, government agencies, unions, school districts, and large and small employers, contract with PBMs to manage their pharmacy benefits. PBMs will save payers more than \$30 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. PBMs help consumers obtain lower prices for prescription drugs through the use of network pharmacies, as well as mail order pharmacies. PBM network pharmacies compete on service, convenience and quality to attract consumers within a particular health plan. This competition helps keep the rising costs of prescription drugs down, while also prioritizing a patient's health and wellbeing. By building networks of pharmacies, patients have convenient access to prescriptions at discounted rates

SB 524 Eliminates Choices for Employers and Individuals to Select a Benefit Plan that Meets Their Needs.

This bill prohibits the ability of health plans and insurers to develop plan designs that lower costs for employers and patients. Further, it would restrict communications to members informing them about access to lower cost medicines. Health plans and insurers design networks of independent, chain and mail-order pharmacies to provide patients with access to a range of high-quality pharmacies, while balancing savings for patients and payers. The benefits developed by health plans are reflected in each plan sponsor's Summary Plan Description (SPD) or Evidence of Coverage (EOC). Thus, if a plan has a particular requirement for prescription drugs to be filled at a network pharmacy, or a preferred network pharmacy or for maintenance drugs to be filled through mail order, it will be spelled out in the plan's SPD or EOC. There are no surprises or changes to the plan's benefit design or the beneficiary's benefits under the plan from the time they enrolled.



SB 524 is not likely to Apply to Self-Funded Employer or Union Plans; Burden Falls on Fully Insured Small Businesses and Individuals who Purchase Coverage through Covered California

Proponents of the bill claim applying the restrictions imposed by SB 524 would apply to self-funded plans as allowed under *Rutledge v. Pharmaceutical Care Management Association* 891 F. 3d 1109. Such an assertion is a gross misrepresentation of the Court's holding. The Court relied on *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) which allowed the state to impose a surcharge on hospital bill rates for patients who had coverage other than Blue Cross Blue Shield. The Court concluded that the imposition of "rate regulation" did not violate ERISA's preemption clause for self-insured plans. The Court stated:

"In short, ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage. *Id.*, at 668; cf. *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U. S. 806, 816 (1997) (concluding that ERISA did not pre-empt a state tax on gross receipts for patient services that simply increased the cost of providing benefits); *Dillingham*, 519 U. S., at 332 (holding that ERISA did not pre-empt a California statute that incentivized, but did not require, plans to follow certain standards for apprenticeship programs). The logic of *Travelers* decides this case. Like the New York surcharge law in *Travelers*, Act 900 is merely a form of cost regulation. It requires PBMs to reimburse pharmacies for prescription drugs at a rate equal to or higher than the pharmacy's acquisition cost. PBMs may well pass those increased costs on to plans, meaning that ERISA plans may pay more for prescription-drug benefits in Arkansas than in, say, Arizona. But "cost uniformity was almost certainly not an object of pre-emption." *Travelers*, 514 U. S., at 662. Nor is the effect of Act 900 so acute that it will effectively dictate plan choices."

SB 524 does, in fact, dictate plan choices for self-insured plans and, therefore, is in violation of ERISA's preemption clause. The purpose of which is to allow plans to have uniform standards and benefits across states, giving all beneficiaries the same benefits and rights.

Most importantly, this kind of government mandate disproportionately impacts individuals and families that purchase their coverage on Covered California or in the individual market, as well as small businesses who provide coverage to their employees in the small group market. These are the most price sensitive markets and increasing drug costs for both the employer and individual patients has detrimental impacts to access and affordability of medications.

Restricting lower cost pharmacy network designs, as well as restricting the use of lower cost mail-order pharmacies will raise costs and lower quality for both patients and payers. In addition to saving patients money, PBMs also monitor prescription drug safety across all of the network pharmacies, alerting pharmacists to potential drug interactions, even if a patient uses multiple pharmacies. Mail order pharmacies have specialized clinical program staffed pharmacists trained in disease management and adherence programs that are designed to increase and improve the overall health status of patients.



SB 524 will increase cost for Californians and ultimately harm consumers. The lost savings for consumers at the pharmacy counter is significant. Further, the bill would not likely stand an ERISA preemption challenge under the *Rutledge* decision. We urge you to consider the impact on patients ahead of the profits of pharmacies and not advance SB 524 out of committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Head', written over the printed name.

Bill Head
Assistant Vice President
State Affairs

CC:

Vice Chair, Senator Melissa Melendez
Members, Senate Health Committee
Principle Consultant, Teri Boughton