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# Sneed Law Firm, LLC

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## Memorandum

To: The Honorable Jene Vickrey, Chair  
House Insurance Committee

From: William W. Sneed, Retained Counsel  
America's Health Insurance Plans

Date: February 19, 2020

RE: H.B. 2598

Thank you for the opportunity to be part of this hearing today and to provide testimony on H.B. 2598. My name is Bill Sneed and I am here representing America's Health Insurance Plans (AHIP) in opposition to this bill as written.<sup>1</sup>

AHIP and health insurance providers share the Committee's concerns about the cost of prescription drugs in Kansas and the ability of consumers to access much-needed treatments in the face of the significant price increases that have been seen in the prescription drug market. However,

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<sup>1</sup> AHIP is the national association whose members provide coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers. Our members are committed to providing consumers with affordable products that offer a broad range of robust provider networks of quality, cost-efficient providers.

we are concerned that the approach of dictating private contractual agreements in the market and creating potentially overbroad or duplicative regulatory systems will have no impact on the underlying cost of drugs, serving only to mask the symptom without addressing the cause of or solutions to the cost of drugs impacting all Kansans. Instead, some provisions in the bill are certain to increase costs and would serve only to compound the problem of prescription drug prices by mandating new reimbursement and creating costly new regulatory requirements while removing the ability of health insurance providers and PBMs to take steps focused on improving quality and protecting consumers. Our concern is that this will result in added costs for everyone in the private market.

AHIP believes that Kansans deserve access to affordable treatments and care that deliver real value. PBMs are not an obstacle to achieving these goals – they are critical partners that work with health insurance providers to achieve those aims. PBMs and health insurance providers fight for patients and, in doing so, provide tangible physical and financial benefits to the people of Kansas. As part of this, health insurance providers work every day to promote health, wellness and prevention; address the significant drivers of chronic disease and poor health; give consumers the power to choose the care and coverage that works best for them; and improve patient care and the consumer experience with innovative tools, treatments, and technologies.

The specific design and management of prescription drug benefits is a significant part of these efforts. Health plans regularly use PBMs to assist in the administration of pharmacy benefits and, as part of this, privately contract with PBMs to provide access to network pharmacies and negotiate

discounts with drug manufacturers. The benefits provided by PBMs go well beyond financial discounts. Along with health insurance providers, PBMs develop and rely on clinically-based services that help protect patients from harmful drug interactions, reduce errors, achieve higher rates of medication adherence, and improve health outcomes. The cost and quality benefits are a tremendous value to all consumers. However, legislation that inserts a wedge between plans and their PBM partners will impact enrollees and increase costs for consumers by creating unnecessary or duplicative requirements.

AHIP does not oppose all forms of common-sense regulation for PBMs, but this bill will likely fail to address the goal of meaningfully reducing prescription drug costs, opting instead for the approach of ensuring the well-being of specific market participants. Upon release of this bill, we were disappointed that the proposal failed to take advantage of the opportunity to pursue meaningful changes to lower the cost of prescription drugs by addressing the drug manufacturers that set prices. Additionally, the unintended consequences of this bill could create an anti-competitive regulatory environment that fails to protect confidential trade secrets that could lead to market behaviors adverse to the interests of consumers. AHIP believes that legislation should instead be focused on taking steps to understand why prescription drug manufacturers engage in pricing practices that harm consumers – on their own, using their sole authority to set the price of the drugs they manufacture. When we recently spoke to the Committee on issues related to insulin pricing, our message was that

the legislation served only to mask symptoms of dramatically increasing drug prices. The same is true of this bill today.

We believe that this dialogue presents a valuable opportunity to refocus our attention on addressing the flaws in the prescription drug market that price patients out of the care they need. Moving forward, we hope that the Committee continues their important work to address the impact of prescription drug costs on the people and employers of Kansas. However, this bill's provisions regarding reimbursement for drugs will ultimately harm everyone in the private market as prescription drug costs are certain to rise if the bill is adopted as proposed.

In analyzing this bill, we have identified a series of problematic provisions, each of which could harm Kansans by increasing costs with no corresponding benefit to consumers. While we have not listed them all, we would like to make the following specific points today.

- The bill infringes on private contracts and pharmacy networks by mandating that PBMs allow all pharmacies to participate as preferred network pharmacies (Section 9(b)). Any willing pharmacy mandates such as this dictate that every PBM must provide preferred status to any pharmacy regardless of factors related to safety, efficiency, waste or whether the pharmacy has been in business 10 days or 10 years. This manner of mandatory contracting between private parties is rare and hinders the ability to craft pharmacy networks based on the highest safety and quality standards.

- HB 2598 creates an anti-competitive payment structure that benefits one set of market participants over other private parties that are supposed to be operating on a level playing field. Throughout the bill the provisions create a series of favorable contractual terms and standards for pharmacies at the expense of PBMs, health insurance providers, and consumers.
- The legislation disincentivizes mail order pharmacy benefits by setting that class of benefit aside as separate and different from other pharmacies. This is particularly true for network adequacy calculations that fail to account for the substantial benefits that mail order brings to patients in rural areas and those with chronic health conditions.
- The bill further infringes on the private market by creating substantial roadblocks to PBM and insurer efforts to ensure high quality and safe networks. For example, the bill runs counter to the best interest of consumers by prohibiting PBMs from developing customized accreditation and certification standards for their pharmacies and contracting partners (e.g., Section (4)(f)). PBMs, like all private parties in a free market, should be permitted to use more stringent criteria for their employees or for those they contract with, rather than limiting those criteria to basic minimum standards. In any industry, a government mandate to contract with everyone meeting the minimum legal qualifications would be met with serious skepticism.
- The creation of a fiduciary duty between a PBM and a health carrier is unneeded and will provide no benefit to consumers (Section 4(a)). In fact, such a requirement could significantly restrain innovative new benefit designs that save costs for businesses in Kansas.

- Requirements in Section 8(b) mandate that PBMs must reimburse any specialty pharmacy that meets the most basic legal requirements to obtain specialty drugs. PBMs and health plans contract with selective specialty pharmacies in order to ensure safe and effective treatment of the most costly, complex medications available. There are clear concerns associated with a government mandate to reimburse any specialty pharmacy regardless of their performance or safety records.
- Patient cost-sharing provisions contained in the bill that are intended to protect patients will ultimately magnify the problems associated with third-party payment of drugs (Section (10)(a)). Drug makers offer copay coupons for brand name drugs under the guise of helping patients afford their medications. Instead, they mask the true cost of brand-name medications from the patient while shifting the financial burden to everyone in the system. They encourage many to opt for more expensive, name-brand drugs, which undermines various benefit designs that are aimed at keeping health care costs low for all consumers.

We appreciate the Committee taking our views into consideration. For these and other reasons, we must oppose H.B. 2598 and ask that the bill be significantly revised. Absent substantial changes, the most obvious result of this bill will be government interference in the private market to benefit one party over others, as well as the need for the state's private insurance market to absorb the significant costs that will result. We look forward to working together to identify and implement solutions that will have a real impact on prescription drug costs. This requires a multi-faceted solution

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with a broad view of the market – unfortunately H.B. 2598 does not constitute such an approach and ultimately places a “thumb on the scale” that will disadvantage consumers.

Thank you for allowing me to appear before you today on behalf of America’s Health Insurance Plans. I am available for questions at your convenience.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "William W. Sneed".

William W. Sneed

WWS:kjb