



DATE: July 29, 2021

FROM: State Representative Adam Neylon

TO: Assembly Committee on Health

RE: Supporting AB 358

Thank you for agreeing to hold a Public Hearing on Assembly Bill 358, legislation that would eliminate the minimum markup on vaccines, prescription drugs and tangible items eligible for purchase with HSA or FSA monies.

As you know, Wisconsin's Unfair Sales Act, known as the minimum markup law, generally prohibits the sale of merchandise at a price below the cost of that merchandise to the seller.

As inflation continues to rise, increasing the price of everything from food to building materials, AB 358 could not be before this committee at a better time. With most goods and services experiencing inflation related price increases, HSA and FSA eligible products will also, if they have not already. The price increase of these products is then exacerbated by our state's minimum markup law. Think about that – our state requires a baked-in profit margin on health and wellness products, even during times of rising inflation.

As many of your constituents know, prescription drugs have seen rapid price increases in recent years. As policymakers, we should work to encourage competition in the market for health and wellness products, including prescription drugs, to help drive down the cost of those products. Helping all Wisconsin citizens, including seniors and fixed income individuals, afford their prescriptions with this free-market approach is a no-brainer.

In closing, please keep in mind this bill has no impact on the minimum markup of motor vehicle fuel, tobacco products, beer, liquor, wine, groceries and other non-qualified medical merchandise.

Thank you for your time and I am happy to answer any questions.



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on AB 358

July 29, 2021

Thank you Chairman Sanfelippo and members of the Assembly Committee on Health for hearing Assembly Bill 358, a proposal I've authored with Rep. Adam Neylon to eliminate a state-imposed barrier to lowering and controlling the cost of medical products.

Wisconsin's current Unfair Sales Act requires certain products be sold at a markup over their wholesale price, and prohibits the retail sale of other products below wholesale prices. Numerous exemptions to these two requirements are outlined in the law. For example, clearance sales, closeout and liquidation sales, and sales of perishable merchandise are not subject to the price controls.¹

According to the federal Bureau of Labor Statistics, medical care commodities today cost over 55% more than what they cost in 2001. Medical care commodities include prescription and non-prescription drugs, medical supplies and certain types of patient-utilized medical equipment like wheelchairs and walkers.² Broadly speaking, all of these items are included in the definition of a "qualified medical expense" in the federal law authorizing health savings accounts.³ These accounts are pre-tax vehicles that individuals may use to pay for medical expenses.

AB 358 modifies the Unfair Sales Act to add an exemption for any product that counts as a qualified medical expense. If this bill became law it would be the tenth exemption the legislature has added to the Unfair Sales Act.

Under the bill, a consumer would not need to use a health savings account for their purchase to be exempt from state pricing requirements. Rather, the bill uses the framework of products eligible for purchase with pre-tax HSA funds to establish the exemption. Many retailers already track these items and using this structure allows retailers to use existing inventory systems to track compliance and pass along savings to consumers.

Retailers should not have to comply with onerous pricing restrictions for medical products. If a retailer is able or willing to lower costs, they should be free to pass along those savings to consumers. Conversely, the state should not eliminate any opportunity for consumers to benefit from significant discounts on medical products. As Wisconsin's population grows increasingly older and as medical expenses and healthcare spending continue to grow as a percentage of the nation's economy, passing legislation that removes roadblocks to lower medical costs is the right thing to do.

¹ <https://docs.legis.wisconsin.gov/statutes/statutes/100/30>

² <https://www.bls.gov/cpi/factsheets/medical-care.htm>

³ <https://www.law.cornell.edu/uscode/text/26/223>



Testimony before Assembly Committee on Health
AB358 – Qualified Medical Expenses Below Cost
Bonny Smith, Walmart

July 29, 2021

Mr. Chairman and Members of the Committee:

Good morning. My name is Bonny Smith, I am a Market Health and Wellness Director for Walmart here in the Madison area, and am currently serving as the Interim Regional Director in Region 53, which includes most of Wisconsin. I have been with Walmart for more than 25 years, I live in the town of Lake Mills, and am also a registered pharmacist in Wisconsin.

Thank you for having me today to testify in support of Assembly Bill 358, which would exempt prescription medications, medical supplies and vaccines from the below cost provision in Wisconsin's Unfair Sales Act. As a health and wellness professional, I am enthusiastic about the prospect of increasing our ability to help reduce the cost of health care for our patients in Wisconsin and provide health care essentials at the most competitive prices.

Walmart is one of the largest retailers in America and serves over 160 million customers each week. We have a unique vantage point for the experiences of American consumers as 90% of Americans live within 10 miles of their local Walmart stores. Our footprint in Wisconsin includes 99 stores, employing over 33,000 associates and collecting on behalf of the state, over \$243 million in taxes. Last year Walmart spent \$3.76 billion dollars with Wisconsin suppliers – a huge impact on our Wisconsin economy. Key components of our retail business involve pharmacy, in-store grocery sales as well as home delivery and grocery pickup.

For many Americans, pharmacies are the most accessible providers of health and wellness services and patient care. In fact, more than 90% of Americans live within five miles of a pharmacy – enabling convenient access to services and care, particularly for those who do not live near treatment centers. Pharmaceuticals have continued to play an increasingly critical role in the management and treatment of disease – which is why accessibility to pharmacies and the affordability of prescription medications is so important to us and our customers – access and affordability are key to improving health outcomes.

Each year, patients and insurers in the United States spend over \$1,200 per person on prescription drugs - more than consumers in any comparable country. (*Org for Economic Co-operation and Dev OECD Data: Pharmaceutical spending*). Prescription drugs were estimated to cost Wisconsinites more than \$1.3 billion in 2019 alone, and those costs are likely higher today. (*AARP fact sheet*)

While many patients in Wisconsin are indeed covered by insurance, Medicare or Medicaid, many patients are NOT and the rising costs of health care put these patients in the position of choosing between their medications, groceries and other necessities – making it difficult for people to be and stay healthy. Many of them – shop at Walmart.

Our Walmart pharmacists see patients every day who cannot afford their medications – I recently experienced this while in one of our Milwaukee stores. A patient who was being counseled on their new blood pressure medication, literally dumped her purse out on the counter and started counting her dollars and change to afford her medicine and wondered how she would be able to afford this therapy. Thankfully we were able to contact the doctor and find her a less expensive alternative, but I often hear of similar situations from our pharmacists. These interactions are very common.

Affordability is not just a matter of convenience for customers, it can be a matter of life and death. According to the State Health Access Data Assistance Center at the University of Minnesota, **22% of Wisconsin residents stopped taking medications as prescribed due to cost.**

Chronic conditions like diabetes, auto-immune diseases, cancer and heart disease require prescription drugs to treat and manage. Many times, high costs to health care consumers and payors spike when minor illnesses are left untreated.

At Walmart, we are finding solutions to help our customers afford their medications and live healthier lives:

- In 2006, we were the **first retailer to roll out a \$4 generic prescription program**, which has saved customers millions of dollars. The drugs on this list represent some of the most commonly prescribed medications in a wide range of therapeutic categories.
- Last month, we rolled out a **new prescription savings offering as part of our Walmart+ membership program.**
- We also recently rolled out a less expensive version of **analog insulin** to help people who don't have health insurance or struggle to pay for this lifesaving drug which presents a financial burden for many. According to the most recent data from the Health Care Cost Institute – the annual cost of insulin for people with Type 1 diabetes in the US nearly doubled from \$2,900 in 2012 to \$5,700 in 2016. (healthcostinstitute/diabetes-and-insulin.com)
- Last weekend, we hosted **Walmart Wellness Days** across the country – an opportunity for customers to get free health screenings and wellness resources at our pharmacies nationwide with the goal of getting back on track with preventative measures. We had hundreds of customers in Wisconsin participate at their local Walmart, and 534 received a Covid vaccine.

These are just a few highlights of what we are doing to help our customers access and afford quality health care. These are real solutions that are helping real people.

One solution that costs government nothing to implement – is to pass this bill and allow retail pharmacies the opportunity to offer the most competitive prices the market can bear. Allow the market to work on behalf of Wisconsin consumers.

It's time to exempt prescription drugs from the Unfair Sales Act and help people save money and live better.

In closing, for many months, our nearly 400 pharmacists in Wisconsin have been on the front lines of this pandemic, risking their own health to provide crucial services, Covid-19 testing and vaccination. I am very proud of the professionalism and dedication of our healthcare heroes as they have tackled the challenges of the last year. We are very proud to serve patients within our communities and advocate on their behalf.

Thank you again for your time today and we ask for your support with this bill.



TO: Assembly Committee on Health

FROM: Danielle Womack
Vice President, Public Affairs
Pharmacy Society of Wisconsin

DATE: July 29, 2021

SUBJECT: **Opposition to Assembly Bill 358**

Thank you, Chairman Sanfelippo and members of the Assembly Committee on Health for the opportunity to testify against Assembly Bill 358. My name is Danielle Womack, and I am the Vice President of Public Affairs at the Pharmacy Society of Wisconsin, an organization representing nearly 4,500 pharmacy professionals.

Every month, Wisconsin pharmacists dispense nearly 6 million prescriptions to the patients they serve. Every day, Wisconsin pharmacists are confronted face to face with the reality that some patients have a difficult time paying for their medications. This is a serious issue where pharmacists on the frontlines have to look patients in the eyes when financial concerns are raised. However, AB 358 is not the answer.

Respectfully, I would like to inform the committee why the Pharmacy Society of Wisconsin opposes the repeal of the Unfair Sales Act.

The vast majority of Wisconsinites have some form of insurance coverage for their prescription medications, so it is a health plan or pharmacy benefit structure that dictates the pass-through costs to the patient. The pharmaceutical company sets acquisition costs with large Fortune 5 wholesalers and rebates with Pharmacy Benefit Managers or PBMs.

AB 358 is not the cure-all for high prescription drug costs, as some of the bill's supporters portray. The medications that pharmacies will sell below cost – for example, as a \$4 generic – are not the medications for which some patients have difficulty paying. Passing this law will not reduce the cost of a medication from 20, 50, or 100 dollars to \$4. That doesn't happen in other states without an Unfair Sales Act, and it won't happen in Wisconsin. Business doesn't work that way. The evidence disputes the saving being touted by proponents, and we ask you to request documented data from anyone making such claims.

Furthermore, prescription medications are not a commodity, and they should not be treated as such. Prescription medications are healthcare products that both state and federal agencies heavily regulate. They are uniquely prescribed and dispensed for individuals. The fact that prescription drugs are not available to consumers other than through licensed healthcare providers is a testament to their unique role in healthcare – certainly more than a commodity that could be bought here or there.



Pharmacists strive to hold down costs and deliver a valuable service for all patients. But, I want to emphasize that the price of a medication is only one consideration that pharmacists use to hold down costs.

Pharmacists are the healthcare providers with expertise in pharmacology and regularly work with patients and their physicians to suggest other therapies that can have the same results at a lower price.

We encourage all patients to work with their pharmacists and discuss the medications they are taking. PSW strongly encourages consumers to select one pharmacy. Buying a medication at one pharmacy and buying another medication from a pharmacy across town or over the internet leads to a patient splitting up their prescription drug record—creating the possibility for drug interactions and other healthcare complications. An incomplete prescription drug record impedes the pharmacist's ability to consult the patient on their medication therapies fully.

Under current law, a pharmacy cannot sell below their invoice cost for a particular drug. If a pharmacy pays \$25 for a drug, you would expect it would need to set the sales price to allow for their costs to be recovered, at a minimum. That is how business works. And, ultimately, a profit must be made to stay in business. However, some companies could use the changes proposed by this bill to sell below their cost for some time, at the expense of other pharmacies in the area. Not only is this bad for the stability of the pharmacy business environment but, by their nature, loss leaders encourage consumers to shop around and, in this case, fractionate their treatment amongst multiple pharmacy providers.

Current law is in place to keep predatory pricing practices from developing. As you know, predatory pricing is when a business purposefully sells a product below cost in an effort to grab market share and drive out competition. The effort to repeal the Unfair Sales Act and provide unfair opportunities to grab market share by some at the expense of others, particularly smaller businesses, has been something Wisconsin policymakers have wisely turned down when it has been proposed in the past. You should turn this down again now.

Whether it be an independent or a chain, a community pharmacy is in business primarily to dispense prescription medications. These businesses provide a safe and usually convenient method for consumers to receive needed medications. Yes, some pharmacies also sell other items, but their primary business is the dispensing of medications.

We believe it is vitally important to Wisconsin's consumers and the healthcare system infrastructure that prescription medications be dispensed and sold in a professional manner. Selling below cost, for any business, would only be temporary and likely supported through higher prices associated with the sale of other products. In either case, consumers would be hurt, and Wisconsin's professional pharmacies – in place to serve the state's citizens – would be jeopardized.

Thank you again for the opportunity to testify.