



# DUEY STROEBEL

STATE SENATOR • 20<sup>TH</sup> DISTRICT

## Testimony on SB 357

*June 29, 2021*

Good morning fellow members of the Senate Committee on Government Operations, Legal Review and Consumer Protection. I'm speaking today on SB 357, my proposal 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.<sup>1</sup>

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.<sup>2</sup> Broadly speaking all of these items are included in the definition of a "qualified medical expense" in the federal law authorizing health savings accounts.<sup>3</sup> These accounts are pre-tax vehicles that individuals may use to pay for medical expenses.

SB 357 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.

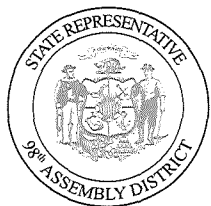
Retailers should not have to comply with onerous pricing restrictions for medical products. If a retailer is able or willing to lower costs, they should be free to pass along those savings to consumers. Conversely, the state should not eliminate any opportunity for consumers to benefit from significant 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.

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

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

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



# Adam Neylon

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State Representative • 98th Assembly District

**DATE:** June 29, 2021

**FROM:** State Representative Adam Neylon

**TO:** Senate Committee on Government Operations, Legal Review and Consumer Protection

**RE:** Supporting AB 357

Thank you for agreeing to hold a Public Hearing on Senate Bill 357, legislation that would eliminate the *minimum markup* on vaccines, prescriptions 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, prohibits the sale of merchandise and prescription drugs at a price below the cost of merchandise to the seller.

In recent years, prescription drugs have seen rapid price increases, which are exacerbated by our state's minimum markup law. As policymakers, we should work to encourage competition in the market for health and wellness products, including prescription drugs, to help drive the cost of those products down. Helping all Wisconsin citizens, including seniors and fixed income individuals, afford their prescriptions with this free-market approach is a no-brainer.

Removing healthcare related merchandise from the Unfair Sales Act promotes competition and prevents consumers from paying artificially inflated prices. In-state businesses already struggle to compete with national e-commerce sites, for selling basic health and wellness products. As a state, Wisconsin should not prohibit homegrown businesses from competing with widely available e-commerce sites thus encouraging consumers to opt for out-of-state online shopping instead of buying locally.

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 hope Sen. Stroebel and I can count on your support of Senate Bill 357.