



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

March 30, 2021

The Honorable Anthony Portantino, Chair
Senate Appropriations Committee
State Capitol
Sacramento, CA 95814

Re: SB 362 (Newman) Community pharmacies: quotas - OPPOSE

Dear Chairman Portantino,

The California Retailers Association (CRA) and National Association of Chain Drug Stores (NACDS) write to express our opposition to SB 362 (Newman), which will prohibit community pharmacies from utilizing metrics to evaluate the performance of employees. It will also put fiscal pressure on the state by creating new enforcement costs for the Board of Pharmacy.

CRA and NACDS members are committed to the well-being of their employees, including ensuring that pharmacists have the tools and support to safely serve patients. In this unprecedented time, our members and their pharmacy teams have risen to the challenge and provided millions of COVID-19 tests and vaccinations to patients throughout the country. CRA and NACDS have advocated to remove barriers to care and assist our pharmacy teams during and beyond the current Public Health Emergency, including by working to allow pharmacy technicians to perform COVID-19 tests and vaccinations and to allow pharmacists to perform point-of-care tests, just to name a few.

While SB 362 may be well-intentioned, it contains a number of onerous provisions that will threaten access to these pharmacy services and jeopardize patient safety. It also requires the Board of Pharmacy to enforce the bill, including determining if pharmacies are in violation and deciding how much a pharmacy will be fined, up to \$1 million. This will result in additional staff hours at the state's expense at a time when California should be conserving resources given the ongoing operational deficit.

In addition to the costs, our primary concerns with SB 362 are as follows:

Ambiguous Requirements that are Impossible to Meet

SB 362 prohibits community pharmacies from communicating "the existence of quotas related to the duties for which a pharmacist or pharmacy technician license is required to pharmacists or pharmacy technicians who are employees of the community pharmacy or with whom the community pharmacy contracts." This requirement will be impossible to meet, as well as may restrict constitutionally-protected free speech improperly. Even if community pharmacies have policies in place prohibiting quotas, managers may communicate certain information to pharmacies regarding vaccine distribution or testing, which would be misconstrued under the broad provisions of SB 362 to be a "quota." This will subject community pharmacies to significant liability under the bill's severe penalties.

Further, existing statute and regulations require community pharmacies to meet certain metrics to ensure patient safety. For example, the Board of Pharmacy recently adopted regulations prohibiting wait-times of more than five minutes for mail-order prescription telephone consultations. The Board also adopted regulations that require additional staff to be available to assist a pharmacist within 5 minutes at any time the pharmacy is open to the public.

These requirements could be construed as performance quotas under SB 362, since pharmacists or other team members must be available within a certain period of time. SB 362 is tying the hands of our members by forcing them to choose which law to break.

Reduced Access to Pharmacy Services

Community pharmacies who are found to be out of compliance with SB 362 will be subject to a \$1 million fine for an initial violation and a 30-day suspension of all of the pharmacies operating in that pharmacy chain – not just the single pharmacy cited. A second violation will result in closure of all of the pharmacies under the chain. Given the ambiguous prohibition on “quotas,” SB 362 could lead to the suspension of hundreds of retail pharmacies throughout the state. Millions of Californians turn to their local pharmacies every day for their medications, vaccinations, and more, and pharmacies are readily accessible in most communities with most Californians living within five miles of a pharmacy. The impacts of SB 362 on access to healthcare could be astronomically harmful at a time when Californians need their medications, screening and vaccinations the most.

Jeopardizes Patient Safety

In addition to compromising access to healthcare, SB 362 will put patients in danger. Performance evaluations and metrics are often one of the only tools community pharmacies can use to discipline and/or terminate employees who may be putting patients at risk for any number of issues, e.g. repeatedly filling inaccurate prescriptions, providing inaccurate consultations, administering improper vaccinations, and more. Mistakes occur and there is a process for correction and improvement, but there are instances when a pharmacy employee is either not completing their duties or putting patients at risk. In these circumstances, performance metrics are a tool to either assist or terminate these employees. By prohibiting this practice, SB 362 will hinder the ability of community pharmacies to remediate these situations, which will be hugely detrimental to patient safety.

Existing State Law Restricts Full Utilization of Pharmacy Team

Instead of prohibiting performance metrics, California should explore solutions that will make pharmacy workflow more efficient while expanding access to care. California’s pharmacist to pharmacy technician ratio has not changed in nearly 17 years. The State’s current law allows one pharmacist to oversee one pharmacy technician (1:1) or two pharmacists to oversee up to three technicians (3:2). California has the most restrictive ratio in the nation compared to many states – including Oregon and Washington – that have unlimited ratios. These restrictive ratios prevent pharmacies from maximizing the use of trained pharmacy technicians to offset pharmacist workload. By allowing pharmacists to oversee additional pharmacy technicians, California would significantly expand access to pharmacy services – including the COVID-19 vaccine – while allowing pharmacists to spend more time on clinical, patient care and reducing pressure on the overall pharmacy team.

Retail pharmacies in California are committed to the safety of their patients and employees. To safely reopen our nation, protect patients and keep Californians healthy, it is imperative that community pharmacies are permitted to utilize some form of metrics to evaluate the job performance of pharmacy team members.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which currently operates over 400,000 retail establishments with a gross domestic product of \$330 billion annually and employs over 3 million people—one fourth of California's total employment.

The National Association of Chain Drug Stores represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' over 80 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and health care affordability.

For the reasons outlined above, CRA and NACDS oppose SB 362 (Newman) and urge your "NO" vote in Senate Appropriations Committee. Please do not hesitate to contact Jennifer Snyder or Lindsay Gullahorn with Capitol Advocacy at jsnyder@capitoladvocacy.com or lgullahorn@capitoladvocacy.com if you have any questions.

Sincerely,



Rachel Michelin, President
California Retailers Association



Steve C. Anderson, FASAE, CAE, IOM
President & Chief Executive Officer
National Association of Chain Drug Stores

cc: The Honorable Josh Newman, Author
Members, Senate Appropriations Committee
Janelle Miyashiro, Senate Appropriations Committee
Heather Wood, Senate Republican Caucus