

February 19, 2021

Delegate Maggie McIntosh  
Chair, House Appropriations Committee  
Maryland General Assembly  
Room 121  
House Office Building  
Annapolis, Maryland 21401

**RE: Labor and Employment - Employment Standards During an Emergency (Maryland Essential Workers' Protection Act)**

Dear Delegate McIntosh:

Pharmacies appreciate fully that their team members form the very core of their service to customers. Fairly compensating team members and protecting their health and safety – along with that of customers – remains atop pharmacies' priorities. The bills that are the subject of this letter would interfere with initiatives already underway to meet the needs of customers, communities, team members, and pharmacies at this extremely challenging time.

On behalf of over 700 chain pharmacies operating in the state of Maryland, the National Association of Chain Drug Stores (NACDS) is writing to convey our concerns with HB 581 introduced in the Maryland General Assembly and urge you to oppose these bills immediately as this legislation would establish adverse employment requirements, namely hazard pay mandates during a public health emergency, on retail pharmacies.

NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate nearly 40,000 pharmacies, and NACDS' 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 healthcare affordability.

NACDS implores the General Assembly to reconsider the adoption of these hazard pay provisions. Furthermore, we strongly urge the General Assembly to conduct a comprehensive economic impact assessment on any proposal regarding hazard pay to fully assess the immediate and long-term impacts of such proposals on targeted industries and sectors, especially retail pharmacies operating during this unprecedented public health emergency. Retail pharmacies are at the heart of the pandemic response, investing significant resources to be vaccination destinations while continuing to provide patient access to life-sustaining and life-saving prescription medications. Any adverse employment requirements, including hazard pay mandates, levied during a public health emergency could undermine such access and must be opposed.

**I. Retail pharmacies, as essential healthcare access points, have already implemented enhanced public health and safety measures for patients, customers, and employees.**

As communities across the country continue to grapple with COVID-19, retail pharmacies have strived to keep their doors open to provide the public with ongoing access to vital pharmacy and basic healthcare services,

while stepping up as a centerpiece of the nation’s COVID-19 response and recovery strategy. In keeping the health and safety of their staff and patients a top priority, community pharmacies have adopted multiple safety measures to minimize exposure. They have done so while continuing to operate in an environment with little to no profit margin coupled with the increased cost of operating during the COVID-19 pandemic.

Chain pharmacies are seamlessly integrated into neighborhoods across the state. In fact, 90% of Americans live within 5 miles of a community pharmacy. Neighborhood pharmacists are trusted healthcare professionals, who have demonstrated commitment, ingenuity, and innovation throughout time. Moreover, longstanding evidence demonstrates that pharmacy care is a fundamental component to vital and sustainable communities, and many Americans from every walk of life depend on pharmacies for their healthcare. During the pandemic, local pharmacies have expended tremendous resources to assist with state and local efforts to ensure access to critical healthcare services, including COVID-19 testing, COVID-19 immunizations, flu clinics, and public access to other basic healthcare services. Retail pharmacies have ramped up healthcare operations to build and execute an array of COVID-19 vaccination models (in-store, mass stations, mobile clinics, et al.) concurrent with providing other critically needed health services.<sup>1</sup>

To support and maintain pharmacies as essential healthcare access points during the pandemic, pharmacies have worked to implement enhanced public health and safety measures to mitigate the risk of exposure to the virus at their stores for patients, customers, and employees. Indeed, retail pharmacies have provided masks, gloves, and protective gear for employees. Pharmacies have also provided partitions between the public and employees where such interactions are likely to occur (e.g., pharmacy counter, cash register). Other such strategies include the implementation of contactless payment systems and standard operating procedures to help ensure contactless delivery of products at stores and homes. Many pharmacies have even lifted wages for employees, including new hires, and compensating employees for extra efforts via “hero bonuses” or “appreciation pay.” Yet, some policymakers seek to mandate adverse employment requirements, including hazard pay, on retail pharmacies that go far beyond these substantial investments.

## **II. Hazard pay mandates on retail pharmacies will place additional and significant financial pressure on pharmacies that will undermine patient access.**

Prior to the pandemic, retail pharmacies were facing unsustainable financial pressures due to increasingly inadequate reimbursement by third-party payers, oftentimes at rates below the cost of buying and dispensing prescription drugs. In fact, dire financial pressures from these reimbursements have contributed to an alarming number of pharmacies closing their doors – recent analysis found that between December 2017 and December 2019, almost 2,000 pharmacies closed nationwide. And this situation has only been exacerbated by additional costs incurred by retail pharmacies directly related to safely serving patients during the COVID-19 public health crisis.

Yet, in the face of dire financial pressure, retail pharmacies still answered the call to swiftly and significantly adapt their practice settings to continue operations during the current pandemic. Requiring hazard pay during a public health emergency beyond the monumental expenses already incurred during the pandemic jeopardizes the viability of pharmacies and undermines access. Specifically, it may lead some businesses to seek other ways to cover the cost of doing business, including reducing expanded contactless checkout and delivery services, which, among other considerations, could impact patient and customer access to retail locations. Worse, the current financial pressure exacerbated by a mandate to provide hazard pay would

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<sup>1</sup> Infrastructure enhancements include inventory management, storage and handling (particularly for temperature-sensitive vaccines), building out online eligibility and appointment scheduling tools, and updating technologies to comply with detailed data reporting to states and the federal government.

certainly force businesses to reduce costs, such as reduced hours, reduced staffing, reduced evening and weekend services, and - inevitably – pharmacy closures.<sup>2</sup> This scenario has dire consequences, as patients will lose access to critical pharmacy services, including acute and chronic, and maintenance prescriptions.

Thus, as proposed, HB 581 imposes an adverse and unduly burdensome requirement thrust upon businesses, including neighborhood healthcare destinations like retail pharmacies, with the potential for downstream impact on patients during the most challenging circumstances.

### **III. Hazard pay mandates on retail pharmacies may raise legal considerations.**

Finally, we urge the General Assembly to carefully consider legal questions that may arise from proposals for hazard pay mandates. For example, proposals could improperly single out retail pharmacies for disparate treatment while not requiring the same treatment of similarly situated businesses, which raise equal protection concerns under the U.S. Constitution. Such proposals could also improperly interfere with retail pharmacies' employment contracts, implicating the right to be free from unreasonable governmental interference with their contracts as protected under the U.S. Constitution. Finally, such proposals may improperly interfere, by design or consequence, with the parameters related to a negotiated wage rate regulated by the National Labor Relations Act. We urge the General Assembly to consider these legal questions moving forward.<sup>3</sup>

### **IV. Conclusion**

NACDS appreciates your consideration of our policy and legal concerns with HB 581 establishing adverse employment requirements, namely hazard pay mandates during a public health emergency, on retail pharmacies. These hazard pay mandates on retail pharmacies place additional and significant financial pressure on pharmacies that have already implemented enhanced public health and safety measures for patients, customers, and employees and will undermine patient access to pharmacy services. In addition to the financial impact on targeted businesses in the state, we urge the General Assembly to carefully consider the legal questions that may arise from hazard pay mandates on these businesses. If you have questions, please contact Jill McCormack, NACDS' Director of State Government Affairs at [jmccormack@nacds.org](mailto:jmccormack@nacds.org) or 717-592-8977.

Sincerely,



Steven C. Anderson, FASAE, CAE, IOM  
President and Chief Executive Officer

CC: Vice Chair and Members of the House Appropriations Committee

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<sup>2</sup> Kroger to shut two Long Beach stores due to local hazard mandate, Feb. 2, 2021, available at [https://www.supermarketnews.com/retail-financial/kroger-shut-two-long-beach-stores-due-local-hazard-pay-mandate?NL=SN-09&Issue=SN-09\\_20210203\\_SN-09\\_719&sfvc4enews=42&cl=article\\_1\\_b&utm\\_rid=CPG06000035949989&utm\\_campaign=43913&utm\\_medium=email&elq2=0e5bcd83ef504317b67ee4fa8624ce5](https://www.supermarketnews.com/retail-financial/kroger-shut-two-long-beach-stores-due-local-hazard-pay-mandate?NL=SN-09&Issue=SN-09_20210203_SN-09_719&sfvc4enews=42&cl=article_1_b&utm_rid=CPG06000035949989&utm_campaign=43913&utm_medium=email&elq2=0e5bcd83ef504317b67ee4fa8624ce5).

<sup>3</sup> See *Northwest Grocery Association v. City of Seattle*, Case No. 2:21-cv-00142 (W.D. Wash.).