



## The Benefits of North Dakota's Pharmacy Ownership Law

JUSTIN DAHLHEIMER  
[jdahlheimer@ilsr.org](mailto:jdahlheimer@ilsr.org)

STACY MITCHELL  
[smitchell@ilsr.org](mailto:smitchell@ilsr.org)

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### Executive Summary

For over four decades, North Dakota's Pharmacy Ownership Law has ensured that pharmacists control and have a stake in the health care services they provide North Dakotan communities. While a Wal-Mart-backed group claims that eliminating the Pharmacy Ownership Law would lead to lower drug prices and other economic benefits, independent data indicate that the law greatly benefits the state's consumers and that its repeal would harm North Dakota's economy:

- Compared to neighboring states, North Dakota has more pharmacies per capita and more pharmacies dispersed across rural areas, ensuring that residents have access to vital health care services.
- Average prescription drug prices in North Dakota are among the lowest in the country.
- The vast majority of North Dakota's pharmacies are locally owned. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, we estimate that about 70 independent pharmacies, employing approximately 600 people, would close.
- This shift from locally owned to chain pharmacies would result in a *net loss* of nearly \$23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

## Introduction

In 1963, the North Dakota Pharmacy Ownership Law was enacted with the purpose of ensuring that pharmacists control and have a stake in the health care services they provide to North Dakotan communities. The law requires that in order to obtain a permit to operate a pharmacy:

"The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy."<sup>1</sup>

As a North Dakota pharmacist explained, the Pharmacy Ownership Law is rooted in the state's long-standing commitment to protecting the welfare and safety of its citizens:

"[The 1890 Pharmacy Practice Act requires] the governor to appoint a state board of pharmacy, which is responsible for examining and licensing applicants for licensure as pharmacists, for issuing permits to operate pharmacies and for *regulating and controlling the dispensing of prescription drugs and the practice of pharmacy for the protection of the health, welfare and safety of the citizens of North Dakota*. This is the basis of the ownership law. If that protection is to be guaranteed, then the decisions pertaining to the pharmaceutical care of people in North Dakota must be made by a registered pharmacist — and there is no better way of making sure this happens than by requiring that pharmacists own a majority stake in pharmacies." [Emphasis added.]<sup>2</sup>

Because the law specifies that pharmacies must be at least 51% owned (majority) by a licensed pharmacist,

it prevents corporate-owned chains, like Walgreen's or Wal-Mart, from obtaining a permit to operate a pharmacy, as they do in the 49 other states.

The law was challenged in the courts, most notably in a 1972 case, *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 202 N.W.2d 140 (N.D. 1972). This case was heard by the United States Supreme Court on appeal, after the North Dakota State Supreme Court had ruled the law was unconstitutional based on a prior U.S. Supreme Court decision, *Liggett Co. v. Baldridge*, 278 U.S. 105 (1928). The U.S. Supreme Court reversed the *Liggett* decision, overturning the North Dakota State Supreme Court ruling and remanded the case back to the North Dakota State Supreme court. This time, however, the North Dakota State Supreme Court upheld the Pharmacy Ownership Law, concluding that reasons given in support of the law were legitimate. Among those reasons: "*Supervision of hired pharmacists by registered-pharmacist owners would be in the best interests of public health and safety.*"<sup>3</sup> Other rationale held that pharmacies' primary purpose is to provide a vital health care service where the practitioners should have the authority to enact policies and run their businesses as they see fit, serving more than just to make a profit.

Over the following decades the law survived more legal challenges. Corporate chains now look to the legislature to repeal the law. This year, a Wal-Mart-backed group, the North Dakotans for Affordable Healthcare (NDAH), has launched a well-funded campaign and lobbying effort to build support for repealing the law.

Although NDAH claims that lifting the law would lead to lower prices and other economic benefits, independent data indicate that the law greatly benefits the state's consumers and that its repeal would harm North Dakota's economy:

- Compared to neighboring states, North Dakota has more pharmacies per capita and more pharmacies dispersed across rural areas, ensuring that residents have access to vital health care services.
- Average prescription drug prices in North Dakota are among the lowest in the country.

- The vast majority of North Dakota’s pharmacies are locally owned. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, we estimate that about 70 independent pharmacies, employing approximately 600 people, would close.
- This shift from locally owned to chain pharmacies would result in a *net loss* of nearly \$23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

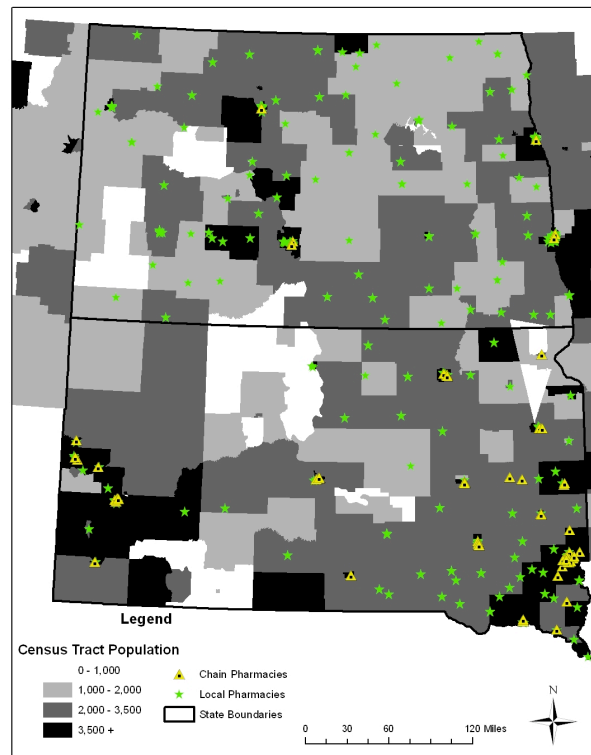
## Rural Access

North Dakotans can look across state lines, into South Dakota, to get a sense of what rural life would be like without the Pharmacy Ownership Law. Rural access to pharmacies is notably less robust in South Dakota, which does not require pharmacies to be owned by pharmacists.

This difference in rural access is evident when geographically represented. Figure 1 shows the locations of chain and local pharmacies in the states of North and South Dakota. The map illustrates that, not only are there more local pharmacies in North Dakota, but they are scattered more uniformly throughout the state. The map reveals that pharmacies in South Dakota are more concentrated in larger–population census tracts, while pharmacies in North Dakota are distributed more broadly across areas with smaller populations.

This observation is further supported by the data in Table 1, which shows that a much higher proportion of North Dakota’s low-population census tracts are served by at least one pharmacy. The differences are significant. Census tracts with 2,001-3,000 people are 31% more likely to have a pharmacy in North Dakota than those in South Dakota. And, while only one-quarter of census tracts with 1,001– 2,000 people in South Dakota have a pharmacy, nearly half of those in North Dakota do.

**Figure 1: Pharmacy Locations and Total Population<sup>4</sup>**



**Table 1: Pharmacy Access in North and South Dakota**

Census Tract Population	# of Census Tracts	# Served by a Pharmacy	% Served by a Pharmacy
<b>North Dakota</b>			
0 - 1,000	18	0	0%
1,001 - 2,000	72	33	46%
2,001 - 3,500	71	39	55%
3,500 +	66	37	56%
<b>South Dakota</b>			
0 - 1,000	40	1	3%
1,001 - 2,000	30	7	23%
2,001 - 3,500	79	33	42%
3,500 +	86	36	42%

North Dakota also has more pharmacies in communities that do not have another pharmacy within 10 miles. Over half of North Dakota's rural independent pharmacies (46) are located in communities where not a single other pharmacy is available for over 10 miles. In South Dakota, one-third of the state's rural independent pharmacies (33) are located in similar communities.<sup>5</sup>

Another way to measure access is to examine whether the population served by pharmacies is the population that often uses them. The uniform spread of North Dakota's independent local pharmacies ensures that people in areas more apt to need a pharmacy's services won't have to travel far. Figure 2 describes the locations of the pharmacies in terms of the proportion of the census tract population that is over the age of 50.

All of this data indicates the North Dakota Pharmacy Ownership Law is having its intended impact, ensuring greater access to pharmacies in all areas regardless of

population density, while also serving a proportionately older population.

## Prices and Service Quality

Data also contradicts the argument that the Pharmacy Ownership Law has led to higher drug prices for North Dakotan residents. In 2005, the national average per drugstore prescription was \$72.61, compared to \$62.05 in North Dakota.<sup>6</sup> In 2007 the national average price per prescription was \$69.90. For that same year, North Dakota came in under the national average at \$65.28 per prescription.<sup>7</sup>

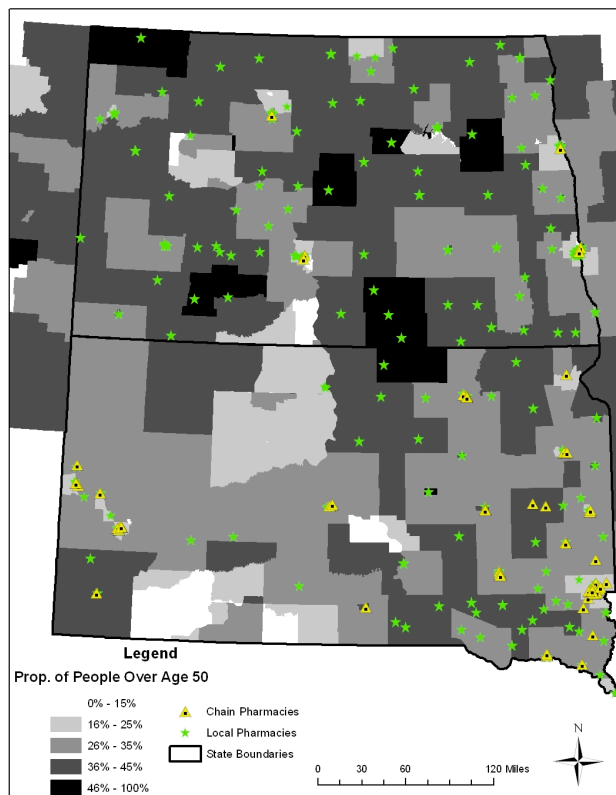
Additionally, *Consumer Reports* surveyed prices for four common drugs and found that major drugstore chains (including CVS, Walgreen's RiteAid, and others) were more expensive than the independent drugstores.<sup>8</sup>

Should North Dakota end up with fewer independent pharmacies serving rural areas, it will cost many North Dakotan's more in transportation-related expenses as they travel farther to obtain their medications.

While North Dakota's drug prices are under the national average, the state's level of service is among the best in the nation thanks to the abundance of independent local pharmacies located in the state.

*Consumer Reports* has repeatedly ranked independent pharmacies #1 overall since it began conducting drugstore "consumer satisfaction" surveys in 1998.<sup>9</sup> The magazine reports that chain drugstores "typically made readers wait longer, were slower to fill orders, and provided less personal attention."<sup>10</sup> In addition to finding independent drugstores' pharmacists to be more accessible, approachable and knowledgeable, *Consumer Reports* found that independent pharmacies offer more health services such as: disease-management education, in-store health screenings for cholesterol, services such as compounding (customizing medications for patients with special needs), and home delivery.<sup>11</sup> Independent drugstores often carry medical supplies that many chain drugstores typically do not, such as canes, walkers, or wheelchairs.<sup>12</sup> In some rural areas, an independent pharmacy is the only provider of these vital healthcare services.

**Figure 2: Pharmacy Locations and Age of Population**



## Economic Impact

The entry of chain pharmacies into North Dakota would have a negative impact on independent drugstores and the state's economy. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, the result would be a *net loss* of nearly \$23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

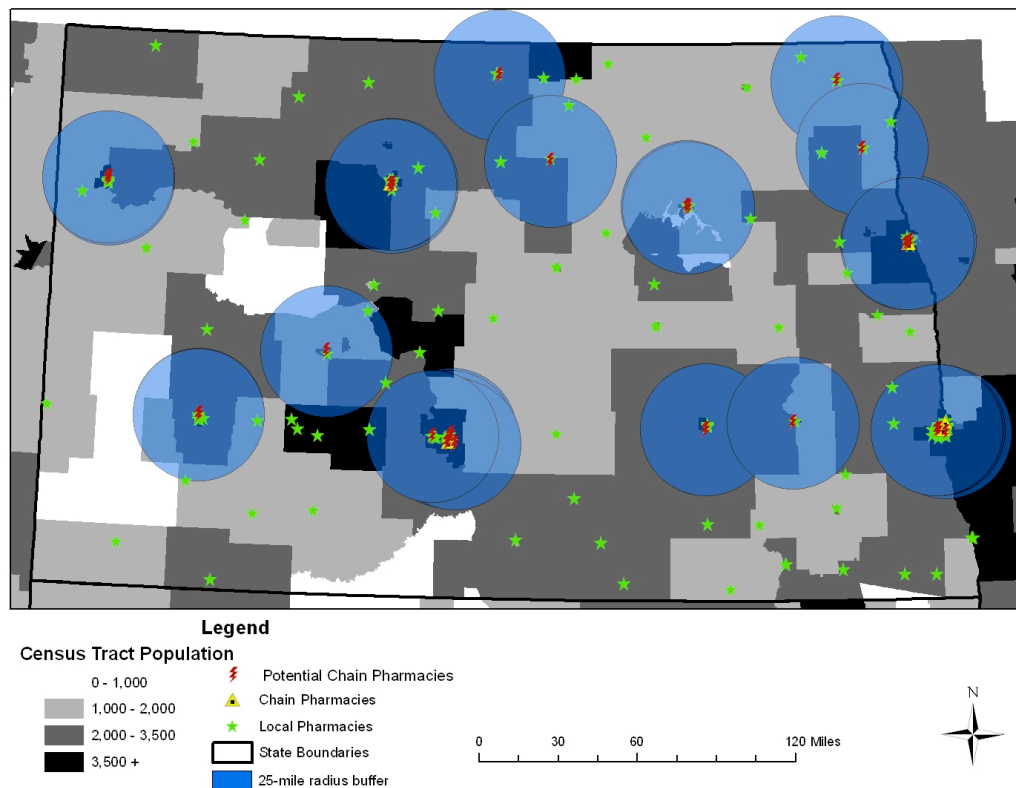
Figure 3 shows locations where chain pharmacies would likely open if the Pharmacy Ownership Law were repealed. These locations include existing supermarkets and general merchandise stores that typically have a pharmacy as part of their operations in other states (Wal-Mart, Target, Sam's Club, Pamida, Coburn's, Hy-vee, etc.). Several of the sites identified in Figure 3 also have sufficient population to attract Walgreens. In South Dakota, Walgreens has 14 outlets in 7 cities, including 6 in Sioux Falls and 3 in Rapid City.

As chains expand in North Dakota, revenue at the state's independent pharmacies will decline. After examining the distribution of independent pharmacies in South Dakota and other states, we anticipate that two groups of North Dakota pharmacies will experience significant impacts: those in and near cities where chains locate pharmacies and those in very rural, low-population areas far removed from cities. As discussed above, North Dakota has a remarkable number of pharmacies serving rural areas. If the Pharmacy Ownership Law is repealed, we anticipate that the number of rural pharmacies will decline to levels found in South Dakota and other states.<sup>13</sup>

Another repercussion of abolishing the Pharmacy Ownership Law will be an increase in the market share of out-of-state mail-order pharmacies. As rural pharmacies disappear, more residents will turn to mail order companies for their prescriptions.

This shift in market share, from independent pharmacies to chains and mail order companies, will negatively impact North Dakota's economy.

**Figure 3: Potential Pharmacy Locations**



Numerous studies have found that independent businesses spend a much larger share of their revenue within the state where they operate than national chains do. This is due in part to the fact that independent businesses rely more on other local businesses for goods and services, such as banking, accounting, and printing. Chains carry out most of these functions at corporate headquarters and have little need for the services of local professionals and other businesses near their stores. Independent businesses also keep profits local and spend a larger share of their revenue on local payroll, because, unlike chains, all of their management is on site.<sup>14</sup>

A 2008 study conducted by the firm Civic Economics quantified this difference with respect to pharmacies. The study determined that, of every \$100 spent at an independent pharmacy, \$17.20 went to local wages and goods and services purchased in the local area, while \$100 spent at a chain pharmacy generated only \$9.70 in benefit for the local economy. (The numbers are relatively low compared to other types of businesses because a large share of the price of a prescription goes to the drug-maker.)<sup>16</sup>

Using these figures, we estimate the direct, in-state economic impact of North Dakota's pharmacy sector in Table 2 based on the current distribution of market share among independent, chains, and out-of-state mail order companies. We assume that mail order generates virtually no in-state economic benefit. Overall, the state's \$430 million pharmacy sector generates over \$67 million in *direct* economic impact in the state. (These direct impacts in turn create *indirect* and *induced* economic impacts, which are likely sizable, but we do not estimate them here.)

Tables 3 and 4 present two scenarios for how North Dakota's pharmacy sector may be affected by the repeal of the Pharmacy Ownership Law.

Scenario 1 assumes that North Dakota's independent pharmacies manage to hold on to 45% of the market, a larger share than they have in the rest of the country. This represents a loss of \$172 million in sales and the closure of about 70 pharmacies that employ roughly 600 people. Chains, including supermarkets and mass merchandisers, expand to 45% of the market, and mail order doubles to 10%. We also assume that pharmacy sales increase to \$450 million as some of the spending that North Dakota residents currently do at out-of-state pharmacies shifts to in-state pharmacies.<sup>17</sup> Although pharmacy revenue increases, because more spending goes to chains and mail order, the direct economic

### Economic Impact of North Dakota's Pharmacies<sup>15</sup>

**TABLE 2: CURRENT**

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	87%	374,100,000	64,345,200
Chain Pharmacies*	8%	34,400,000	3,336,800
Out-of-state Mail Order	5%	21,500,000	0
Total		\$430,000,000	\$67,682,000
* Includes supermarkets and mass merchandisers.			

**TABLE 3: SCENARIO 1**

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	45%	202,500,000	34,830,000
Chain Pharmacies*	45%	202,500,000	19,642,500
Out-of-state Mail Order	10%	45,000,000	0
Total		\$450,000,000	\$54,472,500
<b>Change in Economic Impact of Sector</b>			<b>-\$13,209,500</b>
* Includes supermarkets and mass merchandisers.			

**TABLE 4: SCENARIO 2**

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	30%	135,000,000	23,220,000
Chain Pharmacies*	50%	225,000,000	21,825,000
Out-of-state Mail Order	20%	90,000,000	0
Total		\$450,000,000	\$45,045,000
<b>Change in Economic Impact of Sector</b>			<b>-\$22,637,000</b>
* Includes supermarkets and mass merchandisers.			

impact of the sector declines to \$54 million, a net loss of \$13 million worth of income for North Dakota workers and businesses.

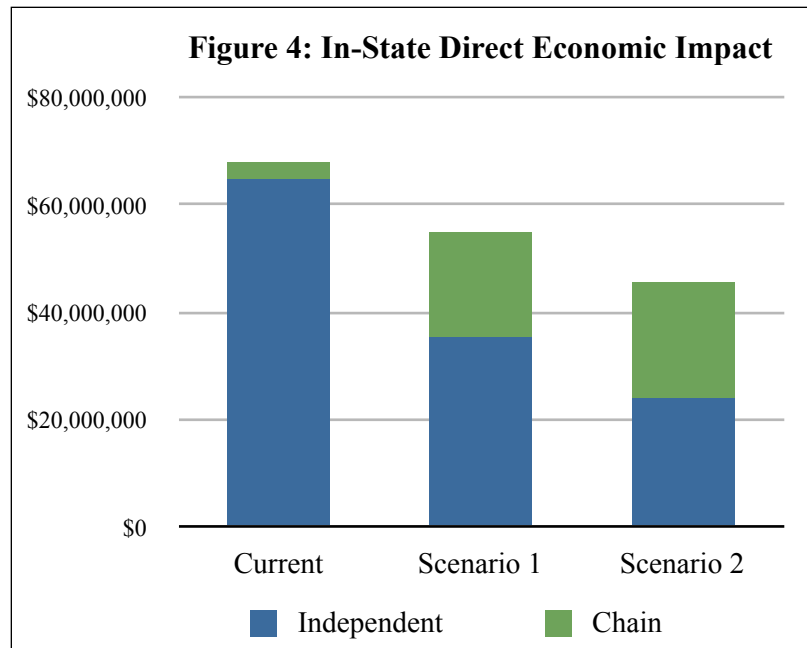
Scenario 2 assumes that repealing the Pharmacy Ownership Law results in North Dakota's pharmacy sector mirroring the national market, with independents slipping to 30% market share, chains expanding to 50%, and mail order growing to 20%.<sup>18</sup> This reduces the direct economic impact of North Dakota's pharmacy sector to \$45 million, a loss of almost \$23 million worth of income for workers and businesses. (Again these are the direct economic losses only. The indirect losses are likely much larger.)

These economic losses will in turn cause a reduction in individual and corporate income taxes. Although we do not estimate the tax losses here, the magnitude of the direct economic losses suggest that the tax revenue losses will run into the millions of dollars.

## Conclusion

North Dakota, largely as a result of its unique Pharmacy Ownership Law, outperforms other states in every key measure of pharmacy services. Rural areas of the state have far more pharmacies and greater access to these vital health care services than is found in other states. Independent pharmacies generally provide superior health care and better customer service compared to chains and mass merchandisers, according to 10 years of data from *Consumer Reports*.

North Dakota consumers also benefit from prescription drug prices that are well below the national average. Even if opponents are correct in their claim that repealing the law will reduce drug prices by 3%, that modest savings must be weighed against the very real and substantial costs that North Dakota residents will incur as access to pharmacies and the important health care services they provide declines.



The Pharmacy Ownership Law also supports the state's economy by fostering a pharmacy sector that is predominantly locally owned. Locally owned pharmacies spend a much larger share of their revenue on wages paid to local employees and goods and services purchased from in-state businesses. Repealing the law would shift a substantial share of the market to chains and mail order pharmacies, causing a net loss to the state of as much as \$23 million annually in direct economic benefits.

However, in this discussion of dollars and cents, it is easy to stray from the core intentions of the Pharmacy Ownership Law—to keep control of a vital health care provider at the level closest to its customers. North Dakota has made it a priority to ensure that the services rendered are focused on maintaining public health and safety and not to be driven by a profit margin. Who better to know what North Dakotan citizens need from their pharmacies than a fellow North Dakotan?

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