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Representative Mitch Greenlick, Co-Chair
Representative Jim Thompson, Co-Chair
House Health Care Committee
900 Court St. NE, Room 453
Salem, Oregon 97301

Re: HB 4122: PBM Licensure and Disclosure: Oppose

Dear Representatives Greenlick and Thompson:

Medco Health Solutions, Inc. regrets it must oppose House Bill 4122 which proposes to require the State Board of Pharmacy ("BOP") to license pharmacy benefits managers ("PBMs"). It further requires PBMs to disclose extensive proprietary, competitively sensitive information to the BOP, which may then distribute that information publicly. Pharmacy benefits managers are hired by large employers, unions, health plans and public sector entities to help manage the quality and affordability of the drug benefit these plans offer to their members or employees.

PBMs comply with numerous already existing state and federal regulatory requirements. The State Board of Pharmacy regulates our mail service pharmacy activities including dispensing, labeling, counseling, generic substitutions, controlled substances, etc. In fact, Medco's mail service pharmacies hold 27 Board of Pharmacy licenses in Oregon. Additionally, through contracts with health plans and insurers, PBMs are required to comply with the same consumer protection laws and regulations governing utilization review and prior approval, timely claims payment, and dispute resolution systems, among others.

HB 4122 presents numerous problems. First, it proposes to require the State Board of Pharmacy to license PBM activities. As previously stated, the BOP regulates our mail service pharmacies. However, extending that role to include overarching regulation of all PBM activities creates a conflict of interest. In 2011 the Federal Trade Commission reviewed a similar bill in Mississippi and stated, "allowing the Pharmacy Board to regulate PBMs will likely undermine a PBM's ability to negotiate lower prices for prescription drugs, which in turn, will raise those prices for both insurers and consumers covered by insurance."¹ The FTC goes on to say, "Because pharmacists and PBMs have a competitive, and at times, adversarial relationship, we are concerned that giving the pharmacy board regulatory power over PBMs may create tensions and conflicts of interest for the pharmacy board."²

¹ FTC Letter to Rep. Mark Formby, Mississippi House of Representatives, dated March 22, 2011.

² Letter from FTC to Rep. Mark Formby, Mississippi House of Representatives, dated March 22, 2011.

Second, HB 4122 requires unprecedented disclosure of detailed financial information to the BOP who, in turn, may share this information with the general public. Even more startling, it specifically authorizes the BOP to share trade secrets including proprietary, competitively sensitive information with pharmacies and pharmacists with whom the PBMs have a contractual relationship. The -2 amendments propose to exempt health plans that also operate a PBM, many of whom are also our clients. These entities, in particular, negotiate their own rebate agreements directly with drug manufacturers and pharmacies. If they had direct access to our contracts it would decrease competition and increase health care costs.

The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.” The Department of Justice and the FTC issued a July 2004 report noting that “states should consider the potential costs and benefits of regulating pharmacy benefit transparency” while pointing out that “vigorous competition in the marketplace for PBMs is more likely to arrive at an optimum level of transparency than regulation of those terms.”³ Finally, forcing PBMs to publicly disclose the terms of business contracts violates the Takings Clause of the U.S. Constitution – effective taking PBM property for public use without just compensation or legal protection.

Public disclosure of rebate agreements is unnecessary because every client has the ability to audit its contract with Medco. These audits ensure that plan sponsors have complete visibility into every element of their contract. This allows them to ensure they receive all the rebates to which they are entitled. In instances where rebate information requests are received from plan sponsors that are not in a position to decrease competition, such as government plans, the terms of the rebate agreements can be viewed directly by the plan. For example, For Medicare Part D, the aggregate rebate dollars are disclosed to the government, and the government is allowed to directly access and audit the rebate agreements.

HB 4122 is anti-competitive, costly and unnecessary. Community and retail pharmacy throughout the state of Oregon is strong. In rural Oregon, consumers typically have access to nine competing pharmacies within 15 miles of their current pharmacy. In suburban Oregon, they have access to 6 competing pharmacies within 5 miles of the current pharmacy and in urban Oregon, 16 competing pharmacies within 2 miles of their current pharmacy. Nationally, according to NACDS, for the past several years, mail share in the industry has been relatively flat while the chain share has been growing at the expense of the independent pharmacy.⁴

For these reasons, we respectfully urge you to oppose HB 4122.

Sincerely,



CYNTHIA M. LAUBACHER

Sr. Director, State Government Affairs

³ US Federal Trade Commission & US Department of Justice Antitrust Division, “Improving Health Care; A Dose of Competition,” July 2004.

⁴ NACDS Chain Pharmacy Industry Profile 2010-2011.