February10, 2012

Co-Chair Mitch Greenlick
Co-Chair Jim Thompson
Honorable Members of the House Health Care Committee
Oregon State Capitol
900 Court Street NE
Salem, OR 97301

Regarding: Opposition to House Bill 4109

Honorable Representatives of the House Health Care Committee:

I am writing to you today to express strong opposition to HB4109, the Generic Drug Purchasing through Competitive Bidding bill. As a small business owner, I can appreciate the concern of the State to save money when possible on the acquisition of generic medications, and can support the intent of the proposed legislation – to save the State money. What I must convey today, is that this proposed legislation will not save the State money and will have a devastating impact on community pharmacies and the clients we serve.

Competitive bidding on generics cannot be discussed without outlining the current system for payment to pharmacies for generics. Since January 1, 2011 State payments to pharmacies on generic medications are based on pharmacies average actual acquisition costs plus a dispensing fee (e.g. pharmacies submit wholesaler invoices to the State on an annual basis). Accordingly, the business practices of pharmacies (to seek, to stock, and sell the most cost effective generic medications) continues to put downward pressure on the prices paid by the State on generics (e.g. when pharmacies find more cost effective generics and sell these generics to consumers, the State pays less based on these invoices). When evaluating the Average Actual Acquisition Cost (AAAC) per unit, the State's current AAAC payment for generics is below the CMS Federal Upper Limit (e.g. meaning that the State is currently paying pharmacies less than what CMS suggests as reimbursement for these products). The inherent flawed assumption with the proposed legislation is that the State can and will negotiate for every drug at each opportunity more advantageous pricing than the buying behaviors exhibited by the market at a national level.

Taking into consideration the law of supply and the law of demand, it is highly likely that the proposed generic competitive bid legislation will place upward pressures on price of generics and supply related challenges will also result. The Federal Drug Administration (FDA) has recently highlighted the increase in drug shortages, with over 80% of such shortages coming from the generic marketplace and such shortages pose a serious and growing threat to public health. In a system such as the proposed, if a specific generic manufacturer had supply related issues, pharmacies would not be able to immediately dispense from an alternative generic manufacturer, as this alternative generic manufacturer would not be on the State's formulary. This means that patients may be turned away at pharmacies when seeking prescriptions solely due to the fact that the pharmacy does not have, or cannot acquire, the specific manufacturer the State receives the rebate for. Whereas patients who do not receive pharmacy benefits from the State continue to receive their medications as the pharmacies are able to continue to provide medications from alternative manufacturers.

The unintended outcome of HB4109, should the legislation pass and become law, (wherein the State of Oregon mandates which specific generic manufacturer a pharmacy keeps in stock, bills to the State and sells to the patient) will result in financial consequences to pharmacy providers and the patients we serve. The marketplace for generics is highly volatile wherein pharmacies such as Central Drugs have to change which generic to keep in stock, often on a weekly basis for reasons due to access and cost. Most pharmacies (specifically independently owned and operated pharmacies) purchase generics based on the product acquisition costs that are negotiated between their respective wholesalers and manufacturers (e.g. given that there are three large wholesalers in the nation, these wholesalers are able to leverage their aggregate buying power at a national level to achieve the most advantageous price possible).

The negative financial repercussions to the pharmacy, will result when the State mandates a specific manufacturer (based on rebates from generic manufacturers) and where the pharmacy (based on the respective pricing contracts between the wholesaler and the manufacturer) pays a much higher price for the specific generic manufacturer mandated by the State than the dispensing pharmacy otherwise would pay from purchasing from an alternative manufacturer. For a pharmacy such as Central Drugs, with a generic efficiency ratio of over 90%, the financial repercussions such as the described will result in a vast negative financial impact and creates a disincentive to dispense generics, as the proposed legislation results in a system that impedes pharmacies ability to obtain the best price for generic medications (savings that pharmacies pass on to the State through our invoices on generics). These negative financial repercussions create pharmacy access concerns, not only in rural areas throughout Oregon, but critical access concerns in urban areas, where pharmacies such as Central Drugs, that provide services to the community such as complimentary a medication adherence packaging are negatively impacted by the outcome of the proposed legislation.

I respectfully ask you for a no vote on House Bill 4109.

Regards:

Shelley J. Bailey

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