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Testimony in Opposition to Oregon House Bill 2638

The Pharmaceutical Research and Manufacturers of America ("PhRMA") appreciates the opportunity to provide testimony on Oregon House Bill 2638. PhRMA represents America's leading biopharmaceutical research and biotechnology companies. Our members are committed to finding tomorrow's cures and treatments for some of the most serious diseases. We share the goals of Oregon and the Oregon Health Authority to provide meaningful access to prescription medications for all Oregonians.

By its own terms, Oregon House Bill 2638 seeks to permit State Coordinated Care Organizations ("CCOs") to purchase prescription drugs through the Oregon Prescription Drug Program ("OPDP") and to permit the Oregon Health Authority ("OHA") to deny access to certain prescription drugs for the first six months following approval by the US Food and Drug Administration. Each of these purported objectives carry significant concern, both for patient access as well as State and CCO vulnerability to claims of violation of US Antitrust laws.

Initially, with patient access and care being the paramount goal of any well-run health program, the desire of OHA to deny access to FDA-approved prescription medications simply because they are "newly approved" is the exact opposite of that goal. In today's innovative medicines environment, many newly approved prescription drugs offer patients access to treatments for diseases that have never been adequately addressed by legacy medicines. In just the past year we have seen innovations that lead to actual cures of chronic and debilitating diseases. Many of these new medicines can, over the life of a patient, lead to a significant decrease in the need for invasive medical interventions and chronic medical care. Many new medicines target the underlying causes of severe diseases rather than just treating their symptoms. Denying patients access, even for just six months, may be a matter of life and death for some. A decision to deny access in this manner is arbitrary, anti-patient, and sends a strong anti-innovation message to the global biopharmaceutical ecosystem.

Beyond the obvious patient access deficit contained in HB 2638, the Bill also presents a serious concern when read in concert with US Antitrust laws. Specifically, Antitrust law does not just limit the collusive nature of sellers, but also of *buyers*. In this case, the purported ability, reinforced by OHA's former Director of Pharmaceutical Purchasing Tom Burns during his early testimony on this measure, for CCOs to "make the buying pool larger" to influence the pricing and discounts provided by prescription drug manufacturers, evidences an objective to facilitate collusive adherence to the State PDL. Absent an exception, none of which would appear to apply under these circumstances, such collusion by buyers in a market could lead to a violation of the Sherman Act. Based upon the plain language of the legislation, coupled with the testimony in support of its passage, it is hard to see how this would not be the case here.

In short, there is little to redeem HB 2638 and PhRMA opposes its passage. We would much rather have discussions to find constructive solutions to better facilitate patients' access to medications throughout Oregon. HB 2638 is not the answer to this issue. We look forward to continuing the dialog with both OHA and the Legislature.