Tuesday, February 6, 2024
Testimony before the House Committee on Behavioral Health and Health Care

HB 4028 -2 Prohibits drug manufacturers from restricting access to certain prescription drugs.

Rep Fahey, Chair; Rep Helfrich, Vice- Chair and esteemed committee members:

My name is Michael Millard, Legislative Co-Chair of the Oregon Society of Health-System Pharmacists, representing pharmacists and technicians working in organized health systems in Oregon to advance the practice of pharmacy and assure that Oregon is a model of excellence in health-system pharmacy.

OSHP supports HB 4028-2, Access by hospitals and clinics to the discounts provided under the provisions of 42 USC 256b is essential to the continued provision of high-quality care and access to Oregonians. Congress enacted Section 340B of the Public Health Service Act, created under Section 602 of the Veterans Health Care Act of 1992. Section 340B requires pharmaceutical manufacturers to enter into an agreement, called a pharmaceutical pricing agreement (PPA), with the HHS Secretary in exchange for having their drugs covered by Medicaid and Medicare Part B. Under the PPA, the manufacturer agrees to provide front-end discounts on covered outpatient drugs purchased by specified providers, called "covered entities," that serve the nation's most vulnerable patient populations. According to congressional report language, the purpose of the 340B program is to enable covered entities "to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services."

Oregon Society of Health-System Pharmacists
9600 SW Oak Street, Suite 565
Tigard, OR 97223
p 503.255.2973 | f 503.253.9172
mail@oshp.org |https://www.oshp.org/

Recently, Drug manufacturers have sought to change the 340B program and scale back the benefits of the program unilaterally and unlawfully to Oregon Hospitals. Further they have sought to increase the regulatory burdens, expand reporting requirements, and impose a moratorium on new entrants into the program.

Due to these efforts, we believe the current language in HB 4028 is insufficient to prohibit all of these potential restraints and burdens on Oregon Hospitals. Other states have found relief in passing statutes regulating these behaviors to support and conserve the benefits of the 340B program. We believe that Oregon should offer its citizens similar protections and amend HB 4028 in include more complete and specific language prohibiting these practices. OSHP has included a specific language below for the committee's consideration. The proposed language is based on successfully implemented laws in both Louisiana and Arkansas. It serves to prohibit discriminatory practices that directly or indirectly limit the monetary benefit that entities participating in the federal 340B Drug Pricing Program receive as result of dispensing drugs discounted by the program. More specifically it prohibits actions by a manufacturer or distributor that would deny, restrict, prohibit, or otherwise interfere with the acquisition of a 340B discounted drug by a pharmacy that is under contract with a healthcare facility that participates in the 340B drug discount program. Relative to enforcement, it contemplates that the commission of any act prohibited by proposed law constitutes a violation of the state's Unfair Trade Practices and Consumer Protection Law or a similar law and allows for an aggrieved party to bring a related action for enforcement.

Oregon Society of Health-System Pharmacists
9600 SW Oak Street, Suite 565
Tigard, OR 97223
p 503.255.2973 | f 503.253.9172
mail@oshp.org |https://www.oshp.org/

Proposed Amendments:

(1) With respect to reimbursement to a 340B covered entity or 340B contract pharmacy for 340B drugs, a health insurance issuer, pharmacy benefit manager, other third-party payor, or its agent shall not do any of the following:

(a) Reimburse a 340B covered entity or 340B contract pharmacy for 340B drugs at a rate lower than that paid for the same drug to entities that are not 340B covered entities or 340B contract pharmacies or lower reimbursement for a claim on the basis that the claim is for a 340B drug.

(b) Impose any terms or conditions on any 340B covered entity or 340B contract pharmacy that differ from such terms or conditions applied to non-340B covered entities or non-340B contract pharmacies including, without limitation, any of the following:

(i) Fees, charges, clawbacks, or other adjustments or assessments. For purposes of this subsection, the term "other adjustment or assessment" includes, without limitation, placing any additional requirements, restrictions, or burdens upon the 340B covered entity or 340B contract pharmacy that results in administrative costs or fees to the 340B covered entity or 340B contract pharmacy that are not placed upon other entities, including affiliate pharmacies of the health insurance issuer, pharmacy benefit manager, or other third-party payor.

(ii) Dispensing fees that are less than the dispensing fees for non-340B entities or non-340B contract pharmacies.

(iii) Restrictions or requirements regarding participation in standard or preferred pharmacy networks.

(iv) Requirements relating to the frequency or scope of audits of inventory management systems.

(v) Requirements that a claim for a drug include any identification, billling modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or submitted unless it is required by the Centers for Medicare and Medicaid Services or the Oregon Health Authority for the administration of the Oregon Medicaid program.

(vi) Any other restrictions, conditions, practices, or policies that are not imposed on non-340B entities.

(c) Require a 340B covered entity or 340B contract pharmacy to reverse, resubmit, or clarify a claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing.

(d) Discriminate against a 340B covered entity or 340B contract pharmacy in a manner that prevents or interferes with any patient's choice to receive such drugs from the 340B

Oregon Society of Health-System Pharmacists
9600 SW Oak Street, Suite 565
Tigard, OR 97223
p 503.255.2973 | f 503.253.9172
mail@oshp.org |https://www.oshp.org/

covered entity, including the administration of such drugs. For purposes of this Subsection, it is considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B covered entity or 340B contract pharmacy if a health insurance issuer, pharmacy benefit manager, or other third-party payor places any additional requirements, restrictions, or unnecessary burdens upon the 340B covered entity or 340B contract pharmacy that results in administrative costs or fees to the 340B covered entity or 340B contract pharmacy, including but not limited to requiring a claim for a drug to include any identification, billling modifier, attestation or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or Oregon Health Authority in administration of the Oregon Medicaid program.

(e) Include any other provision in a contract between a health insurance issuer, pharmacy benefit manager, or other third-party payor and a 340B covered entity or 340B contract pharmacy that discriminates against the 340B covered entity or 340B contract pharmacy or prevents or interferes with an individual's choice to receive a prescription drug from a 340B covered entity or 340B contract pharmacy, including the administration of the drug, in person or via direct delivery, mail, or other form of shipment, or creation of a restriction or additional charge on a patient who chooses to receive drugs from a 340B covered entity or 340B contract pharmacy.

(f) Require or compel the submission of ingredient costs or pricing data pertaining to 340B drugs to any health insurance issuer, pharmacy benefit manager, or other third-party payor.

(g) Exclude any 340B covered entity or 340B contract pharmacy from the health insurance issuer, pharmacy benefit manager, or other third-party payor network on the basis that the 340B covered entity or 340B contract pharmacy dispenses 340B drugs, or refusing to contract with a 340B covered entity or 340B contract pharmacy for reasons other than those that apply equally to non-340B entities.

SECTION 5: MEDICAID UNAFFECTED

Nothing in this act applies to the Oregon Medicaid program as payor when Medicaid provides reimbursement for covered outpatient drugs as defined in 42 U.S.C. 1396r–8(k)).

SECTION 6: VIOLATIONS

The commission of any act prohibited by this act is considered a violation provided for in 735.530 thru 735.552 *et seq*. and subjects the violator to any and all actions, including investigative demands, remedies, and penalties provided for in the statute. A violation occurs each time a prohibited act is committed.

Oregon Society of Health-System Pharmacists
9600 SW Oak Street, Suite 565
Tigard, OR 97223
p 503.255.2973 | f 503.253.9172
mail@oshp.org |https://www.oshp.org/

Reduction of the benefits of the 340B program to Oregon Hospitals would be disastrous in the current environment. The significant increase in drug costs would worsen the economic hardships already presented to all Oregon Hospitals, but especially those rural and critical access hospitals so vital to our citizens living outside the metropolitan areas. We urge the committee to act in this session to protect this well-established program that has been working for the benefit of all for over 30 years.

I have included a statement of support from the American Hospital Association for your information.

Sincerely, on behalf of OSHP,

Michael Millard BPharm MS FOSHP
Legislative Co Chair OSHP Legal and Regulatory Affairs Committee.

Oregon Society of Health-System Pharmacists
9600 SW Oak Street, Suite 565
Tigard, OR 97223
p 503.255.2973 | f 503.253.9172
mail@oshp.org |https://www.oshp.org/