The Oregon Access Problem:

If the State Legislature does not take meaningful action in 2025, patients across Oregon will continue to lose access to pharmaceutical care and their trusted pharmacy professionals.

Presentation researched and assembled by the following speakers:

The Oregon Access Problem:

Oregon has the **2nd worst** ranking **in the nation in access** to pharmacy.

OPB: Pharmacy Access Extremely Limited in Oregon

AP Interactive Pharmacy Map

Oregonian Interactive Pharmacy Map

Noted Transparency & Accountability Problems in the public, regulated system provides insight as to what is happening - or not happening - on the unexamined commercial side:

SOS Audit on PBMs in Oregon Medicaid System

The Oregon Access Problem:

Oregon pharmacy **closures** have **increased rapidly** and we are at the **tipping point**.

Oregonian: State Hardest Hit in Wave of Closures Nationally

CO Daily: Bend Walgreens Closing

Why????

Insurance companies and PBMs are vertically integrated, financially intertwined and even mutually-invested in each other.

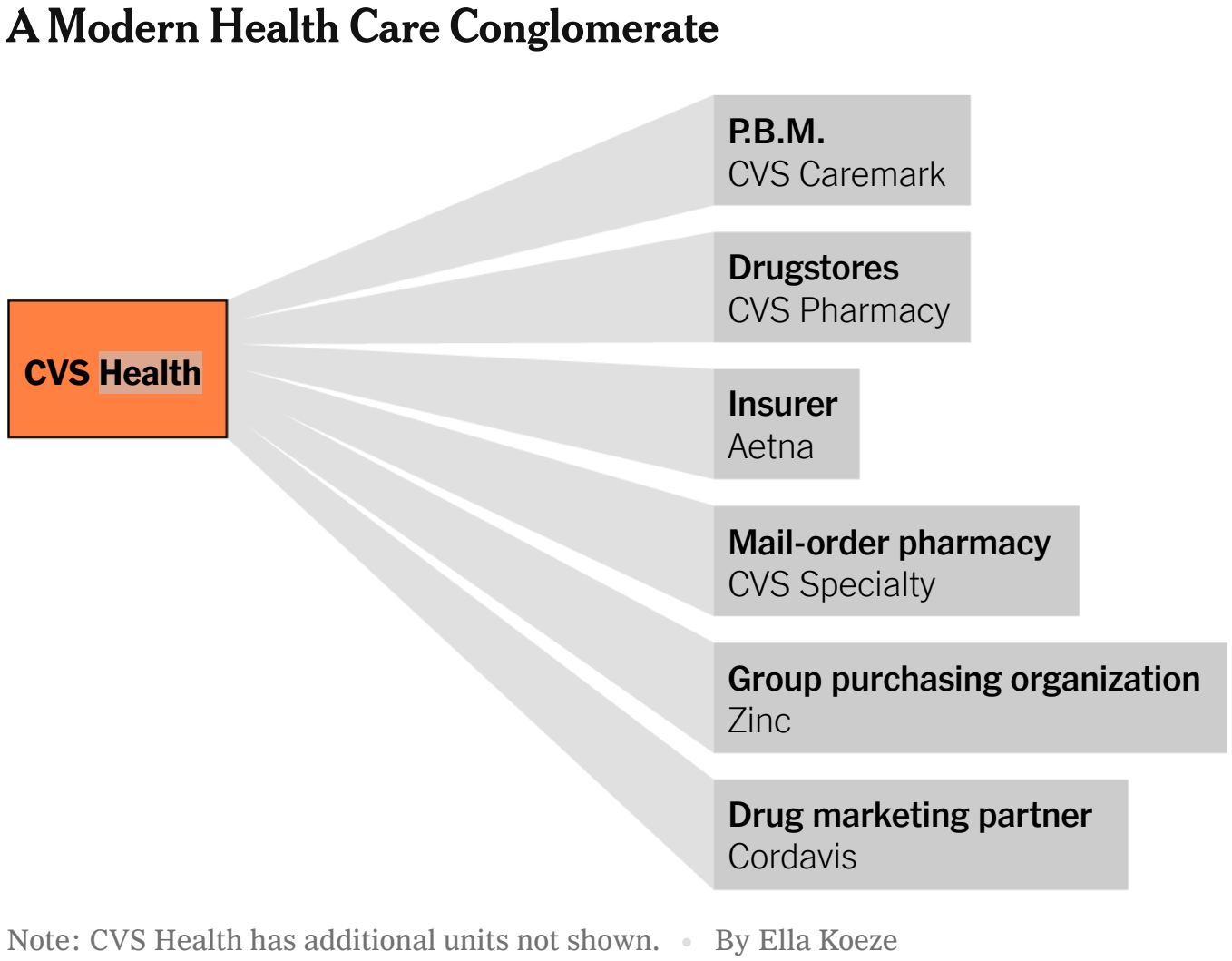
> "**The three largest** – Express Scripts (an independent publicly-traded company), CVS Caremark (the pharmacy service segment of CVS Health and a subsidiary of the CVS drugstore chain), and OptumRx (the pharmacy service segment of UnitedHealth Group Insurance) – **controlling approximately 89% of the market and serving about 270 million Americans. "**

NOTE: Express Scripts is owned by Cigna, despite being referred to as "independently" traded; Cigna now has 2 distinct profit centers.

Source: National Association of Insurance Commissioners, who dedicated an entire workgroup and sub-committee to PBMs and how they impact costs.

Why????

Insurance companies and PBMs are vertically integrated, financially intertwined and even mutually-invested in each other/themselves.



Source: NY Times, June 21 2024 Article

Why????

Insurance companies and PBMs are vertically integrated, financially intertwined and even mutually-invested in each other/themselves.

"The job of the P.B.M.s is to reduce drug costs. Instead, they frequently do the opposite. They steer patients toward pricier drugs, charge steep markups on what would otherwise be inexpensive medicines and extract billions of dollars in hidden fees, a New York Times investigation found."

Source: NY Times, June 21 2024 Article

Oregon's Legacy in the Balance:

Oregon pharmacists have toiled in good faith for over a decade to pass enforceable regulations… and have yet to achieve the stability necessary to maintain - let alone strengthen - patient access.

2012: Oregon **failed** to pass a bill that would have required certification/registration with the Board of Pharmacy.
2013: Oregon established registration of PBMs. **Stranded provisions** included prohibiting incentives for mail order.
2014: Oregon **failed** to pass two provisions around patient choice in mail order and prescription refill mandates.
2016: Oregon **failed** to pass the same two provisions as above, but a budget note assigned authority to DCBS.
2017: DCBS was granted statutory oversight and enforcement powers, but with **lower fines** than others in the nation.
2019: Oregon was finally successful in allowing for patient choice, anti retaliation and **attempted to ban clawbacks**.
2020: Oregon **failed** to pass three different bills that would have eliminated fees, redefined PBMs, pay-to-play.
2022: Oregon was only able to pass a bill banning "evergreen" contracts, but **not other "fair practice"** provisions.
2023: Oregon **failed** to mandate reimbursement floors, elimination of all fees, update the definition of PBMs.
2023: Oregon did pass a bill aimed at eliminating **DIR Fees**, which Oregon **pharmacists report are still ongoing**.
2024: Oregon did pass a bill providing the agency more transparency, but **lost the sustaining policies** on payment.

Oregon's Legacy in the Balance:

Oregon has a choice: continue to squeeze patient-pharmacy access points by allowing PBMs to continue to use contract-based, network and financial dependency to suffocate locally operated, community focused, brick and mortar pharmacies.

If they were stand-alone companies, the three biggest P.B.M.s would each rank among the top 40 U.S. companies by revenue.

The largest, Caremark, generates more revenue than Ford or Home Depot.

NY Times: Employers Don't Grasp the Impact of Their Choices.

Resolving Oregon's Access Problem

Oregon Pharmacists have identified 7 Pillars to resolve the patient access problem.

- **"Spread Pricing" Ban** - prohibiting the practice of spread pricing in Oregon
- **Reimbursement Restructuring** - setting a floor for reimbursement and dispensing fees
- **Access Anywhere** - streamline/ease obligations to be in-network to increase access
- **Equitable Terms** - prohibiting preferential terms due to affiliation, ban patient steering
- **SCOTUS & Rutledge Ruling** - specific defining characteristics to ensure access for all
- **Prohibitions on Retaliation** - fixing mandates that force businesses to operate at a loss
- **Good-Faith Business Practices** - administrative and contractual integrity in partnership

NOTE: Some policies have been proposed in the past and some are designed to build off of recently passed policy.

Resolving Oregon's Access Problem

"Spread Pricing" Ban:

Spread pricing is the PBM practice of charging payers more than they pay the pharmacy for a medication and then the PBM keeps the "spread" or difference as profit. May include monies clawed back or not paid to pharmacies for "performance-based" or other contract types

Proposed language: A PBM is prohibited from conducting spread pricing

States with some form of prohibiting spread pricing: Arkansas, Delaware, Georgia, Louisiana, Michigan, Oklahoma, Virginia

Resolving Oregon's Access Problem

Reimbursement Restructuring:

Requesting HB 3013 language with changes based on feedback

Change from MAC to NADAC as reimbursement methodology
Where NADAC is not available, then WAC
If neither NADAC nor WAC is available, then Usual & Customary

Plus professional dispensing fee
Shall pay a solo network pharmacy or a network pharmacy chain a professional dispensing fee in an amount no less than the dispensing fee established by the Oregon Health Authority by rule

States with provisions to prevent under-reimbursement Arkansas, Delaware, Idaho, Louisiana, Montana, Oklahoma, Tennessee, Wyoming

Resolving Oregon's Access Problem

Access Anywhere:

Must permit the policyholder, certificate holder or beneficiary, at the time of issuance, amendment or renewal, to select a licensed pharmacy or licensed pharmacist for the dispensing of prescription drugs reimbursed by the policy, certificate or contract;

May not deny a pharmacy or pharmacist licensed in this state the opportunity to participate as a preferred provider or a contracting provider, under the same terms and conditions applicable to all other preferred or contracting providers if the pharmacy or pharmacist agrees to the terms and conditions;

Requirements to participate in network must be reasonable, not overly burdensome, not have a cost, and not be stricter than standard of care

35 states have some statutes addressing access including the above

Resolving Oregon's Access Problem

Equitable Terms:

A pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services.

A pharmacy benefit manager shall not require a covered individual to fill a prescription or receive pharmacy care services from an affiliated pharmacy

16 states have some form of prohibition of steering
15 states regulate reimbursements to PBM-owned pharmacies

Resolving Oregon's Access Problem

SCOTUS & Rutledge:

Oregon is in the 9th Circuit, so the law of the land remains Rutledge.

State rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage are not pre-empted by ERISA. (Rutledge v PCMA)

Arkansas Act 900 does not " 'ac[t] immediately and exclusively upon ERISA plans,' " and " 'the existence of ERISA plans is [not] essential to the law's operation.' " … Act 900 affects plans only insofar as PBMs may pass along higher pharmacy rates to plans with which they contract, and Act 900 regulates PBMs whether or not the plans they service fall within ERISA's coverage. ERISA plans are therefore also not essential to Act 900's operation (Rutledge v PCMA)

Resolving Oregon's Access Problem

Prohibitions on Retaliation:

A pharmacy or pharmacist may decline to provide the pharmacist services to a patient or pharmacy benefits manager if a pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the pharmacy providing pharmacist services.

May not punish pharmacists or pharmacies because they discussed details of payment with employers or payers.

Resolving Oregon's Access Problem

Good Faith Business Practices:

Contracts and all addendums must be agreed to or affirmed in writing by the pharmacy or PSAO at least 30 days in advance

A pharmacy benefits manager shall not require that a pharmacy participate in one contract in order to participate in another contract. (Louisiana, Maine, New Mexico)

A violation of reimbursement floor is a deceptive and unconscionable trade practice (Arkansas, Louisiana)

The Oregon Access Problem…

If the State Legislature does not take meaningful action in 2025, patients across Oregon will continue to lose access to pharmaceutical care and their trusted pharmacy professionals.

…Needs to be Resolved.