NACDS Testimony to the Oregon House Behavioral Health and Health Care Committee

Tuesday, February 4, 2025

Support HB3212– Strengthening Oregon's Laws that Protect Against Abusive PBM Practices

Chair Nosse and members of the House Behavioral Health and Health Care Committee, thank you for the opportunity to testify in support of HB 3212. I also extend my gratitude to the sponsors of this crucial bill to strengthen Oregon's laws for pharmacy benefit managers (PBMs). PBMs manage 80% of the country's prescription benefits on behalf of health plans and have used their power to steer patients to higher-cost drugs at their affiliated pharmacies. As indicated in the recent Federal Trade Commission (FTC) report, PBMs have inflated drug costs and abused their position by establishing unfair and questionable business practices that enrich themselves as the middlemen at the expense of Oregonians and their trusted neighborhood pharmacies.

Pharmacies have been and continue to be at the receiving end of the unjustifiable harm caused by PBM practices and tactics. PBM's untenable reimbursement rates make it extremely difficult for Oregon pharmacies and pharmacists to provide timely, quality care and access to everyday medications for patients with acute or chronic disease states or hypertension. **HB 3212 aims to tip the scales in favor of patient access and help ensure the sustainability of neighborhood pharmacies. In alignment with comprehensive PBM reform efforts across the states and bipartisan efforts at the federal level,** HB 3212 would prohibit spread pricing and patient steering, restrict PBMs from mandating pharmacies to provide a health care service at a loss, prohibit PBMs from requiring further accreditation standards beyond those currently required by the Oregon Board of Pharmacy, help to ensure network adequacy, and most importantly, help to ensure reasonable and relevant reimbursement to community pharmacies that covers the true costs for pharmacies to purchase and dispense prescription drugs.

Comprehensive reimbursement that is fair, adequate, and covers the true cost to acquire and dispense prescription drugs is essential to ensure that pharmacies can cover the full range of costs associated with providing quality patient care, including medication management, overhead expenses, and professional services. This will sustain their operations and ensure patient access to necessary medications and healthcare services. As such, pharmacy reimbursement should comprise two parts: 1) the drug's ingredient cost and 2) a professional dispensing fee (PDF) across payer markets and nothing less. By design, the adoption of reasonable and relevant reimbursement that covers the cost to purchase and dispense prescription drugs prevents below-

cost reimbursement that inflicts financial burdens on pharmacies and ultimately jeopardizes patient care. As such, to provide more insight on pharmacy reimbursement and pharmacy costs to purchase prescription drugs, the National Average Drug Acquisition Cost ("NADAC") is an index of drug ingredient costs that retail pharmacies pay for prescription drugs. This index is based on monthly surveys of pharmacy invoices voluntarily provided to the Centers for Medicare & Medicaid Services ("CMS"). The NADAC benchmark for pharmacy reimbursement has gained increasing recognition as the standard benchmark for ingredient costs in community pharmacies of all sizes.

The second part of the pharmacy reimbursement, the professional dispensing fee, is designed to cover the costs of business and services to provide the prescription to the patients. The professional dispensing fee is typically calculated to incorporate the costs of a pharmacist's time reviewing the patient's medication history/coverage, filling the container, performing a drug utilization review, medication management, overhead expenses (rent, heat, etc.), labor expenses, patient counseling, and more to provide quality patient care.[1] **HB 3212 would help support necessary and adequate pharmacy reimbursement rates to include both components of this reimbursement structure with NADAC plus a professional dispensing fee to help to ensure sustainable patient access to local pharmacy care.** It is important to now understand the impact of PBM practices on pharmacy reimbursement. Unfortunately, the effects of PBMs' lopsided business practices and deep-cut reimbursements to pharmacy providers at inadequate levels have been widely reported. At the state level, Oregon state Medicaid CCO overpaid $1,920,889 on dimethyl fumarate, a drug used to treat multiple sclerosis (MS). This is only one example as PBMs' egregious behavior has gained attention federally as noted more recently by the Federal Trade Commission (FTC) in its publicly released second interim staff report on the PBM industry's impact on specialty generic drugs in the Medicare and commercial market. In its report, the FTC cited atrocities such as price hikes on cancer drugs, anticoagulants, and more. **The latest findings highlight numerous marked-up specialty generic drugs dispensed by the 'Big 3 PBMs' and their affiliated pharmacies by thousands of percent and others by hundreds of percent.** This was in addition to significant patient steering of the highly profitable prescriptions to their affiliated pharmacies. For example, of the specialty drugs analyzed that were dispensed at affiliated pharmacies in the commercial market, 63% were reimbursed at rates marked up by more

[1]CMS defines the professional dispensing fee at 42 CFR § 447.502 https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-447/subpart-I/section-447.502

than 100% over the estimated NADAC, and 22% were increased by greater than 1,000%. **Additionally, the "Big 3 PBMs" generated more than $7.3 billion in revenue for dispensing drugs in excess of NADAC on these specialty generic drugs**. We believe these funds rightfully belong to the patients, their respective plans, employers, and the under-paid or unpaid neighborhood pharmacies that communities and patients depend on. HB 3212 presents a crucial opportunity to reform PBM practices and outrageous markups, reduce healthcare costs, and ensure that funds are appropriately directed to the entities (i.e., neighborhood pharmacies) that are truly dedicated to patient care.

In closing, I will note that throughout Oregon, neighborhood pharmacies – chains and independents alike – are experiencing the financial headwinds of below-cost reimbursement that threaten their long-term viability, and ultimately, patient access to care. In Oregon alone, there were 36 pharmacy closures in 2023. Establishing a cost-based pharmacy reimbursement, HB 3212 will help prevent PBMs' harmful tactics that impede patient access.

With 90 percent of Americans living within 5 miles of a pharmacy, HB 3212 will help to ensure Oregon families have sustained access to pharmacy care at their neighborhood pharmacies. Putting an end to PBM abuse is good for patients and will help stop the bleeding of community pharmacies in Oregon. **For all of these reasons, NACDS and its members urge Oregon lawmakers to advance HB 3212 so patients across Oregon won't lose access to their trusted pharmaceutical care.**