STATEMENT

PhRMA
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In Opposition to HB 3082
Patient Assistance Program Reporting
January 31, 2025

Position: The Pharmaceutical Research and Manufacturers of America ("PhRMA") respectfully opposes House Bill 3082, which would exacerbate existing legal concerns with Oregon's transparency laws by requiring drug manufacturers to report additional confidential and proprietary information.

HB 3082 expands current transparency reporting in an uncertain manner without clear benefit to the State.

Existing Oregon law requires that manufacturers report patient assistance program ("PAP") information to the state only for a drug that meets specific, carefully crafted thresholds for price and price increases. HB 3082 would instead require manufacturers of drugs sold in Oregon to report the "total number of consumers" participating in their PAPs, regardless of whether the drug for which a PAP is offered meets the price increase threshold for drug price transparency reporting. The expanded reporting requirement would apply to an unclear set of drugs, patients, and PAPs and will create a significant administrative burden for the state, and its is unclear how it would provide useable information or how it will be consistent with the goals of the Drug Price Transparency Program.

While the Drug Price Transparency Program and the Prescription Drug Affordability Board have recommended expanded PAP reporting requirements based on arguments commonly made by insurance carriers,[1] such arguments do not withstand scrutiny. Insurers have propagated the idea that cost-sharing assistance (also known as "coupons") push patients to brand medicines when generic medicines are available. But the data show that less than 1% of coupons are used on products for which a generic is available.[2] For this small percentage of the market, a patient may use cost-sharing assistance for brand medicines rather than the generic version because their healthcare provider prescribed that brand medicine based on their specific needs.

Expanding patient assistance program reporting would exacerbate existing legal concerns with Oregon transparency laws.[3]

Requiring manufacturers to submit additional confidential and proprietary information, such as data on all PAPs that a manufacturer has offered for an applicable drug, exacerbates existing legal concerns with Oregon's transparency law. As PhRMA has argued in federal court, the law unlawfully requires manufacturers to disclose confidential and proprietary information, in violation of their rights against compelled speech under the First Amendment and against the uncompensated takings of private property under the Fifth Amendment. PhRMA successfully challenged the requirements placed on manufacturers under 2018 Or. L.

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[1] "2024 Annual Report for the Oregon Legislature", PDAB, December 2024. https://dfr.oregon.gov/pdab/Documents/reports/2024-PDAB-Annual-Report.pdf; "Prescription Drug Price Transparency Program results and recommendations – 2024." DCBS, November 27, 2024. https://dfr.oregon.gov/drugtransparency/Documents/20241121-dpt-hearing/Prescription-Drug-Price-Transparency-Annual-Report-2024.pdf.

[2] IQVIA, An Evaluation of Co-Pay Card Utilization in Brands After Generic Competitor Launch (2018) https://www.iqvia.com/locations/united-states/library/fact-sheets/evaluation-of-co-pay-card-utilization.

[3] *See PhRMA v. Stolfi*, --- F. Supp. 3d ----, 2024 WL 1177999 (D. Or. Mar. 19, 2024), *appeal pending*, No. 24-1570 (9th Cir. filed Mar. 15, 2024).

Ch. 7 (HB 4005, as amended in 2019 by HB 2658), and a federal district court declared that the law was unconstitutional on First and Fifth Amendment grounds.[4]

Oregon HB 3082 exacerbates these concerns. It would significantly broaden the existing transparency requirements that are the subject of PhRMA's ongoing lawsuit, requiring manufacturers to disclose *even more* proprietary and confidential data – and thus putting more confidential information at risk of disclosure, thereby increasing in severity the constitutional, economic, and legal injuries that the transparency law inflicts on manufacturers. In addition, any changes to the manufacturer reporting requirements of ORS 646A.689 would risk violating the existing court judgment and would be premature until PhRMA's pending lawsuit has been resolved.

Oregon should also require PBMs and Insurers to report on copay accumulators and maximizers.

HB 3082 focuses only on manufacturer PAPs and ignores the companion recommendation from the Prescription Drug Affordability Board and the Drug Price Transparency Program that the legislature "[i]mplement mandatory reporting on copay accumulator and maximizer programs to ensure equitable access to essential medications and prioritize transparency."[5] PhRMA shares Oregon's concerns with the lack of transparency for copay accumulator and maximizer programs and recognizes this effort to gather additional information.[6] These programs can unfairly increase patient cost-sharing burdens by not counting assistance towards a patient's cost-sharing requirements. Accumulator and maximizer programs, which are determined by plans and PBMs, contribute to the inability of people in Oregon to afford their health care and medications.

Furthermore, PhRMA recommends that the Legislature consider expanding its recommendation beyond copay accumulator and maximizer programs to include Alternative Funding Programs ("AFPs"). AFPs utilize third-party vendors, sometimes in partnership with smaller PBMs, to convince health plans to drop coverage of some or all specialty medicines and assist patients in getting access to those medicines through PAPs intended for uninsured or underinsured patients. AFPs are a type of cherry-picking strategy to avoid paying for certain drugs for individuals with higher health risks, such as individuals with pre-existing conditions. These programs disproportionately affect individuals living with chronic and rare conditions who need life-saving specialty medications, which raises health equity concerns.[7]

For the reasons stated above, PhRMA respectfully opposes HB 3082 and appreciates your consideration prior to advancing this bill.

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The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier and more productive lives. Over the last decade, PhRMA member companies have more than doubled their annual investment in the search for new treatments and cures, including nearly $101 billion in 2022 alone.

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[4] *Id.*

[5] PDAB, *supra* note 1; DCBS, *supra* note 1.

[6] Accumulator adjustment programs (also referred to as "copay accumulators") block manufacturer cost-sharing assistance from counting towards cost-sharing requirements, including deductibles and maximum out-of-pocket limits. This means patients could be paying more at the pharmacy than they should be. Maximizers are insurance benefit designs that generally restructure a patient's cost sharing obligations for a particular drug to equal the full value of manufacturer cost sharing assistance available for that drug. Maximizers are designed to fully deplete available cost-sharing assistance before insurance coverage kicks in and skirt the protection of the Affordable Care Act's annual limit on cost sharing for some plans by designating medications as non-Essential Health Benefits.

[7] *See* National Black Caucus of State Legislators, Resolution HHS-24-37, available at: https://nbcsl.org/wpcontent/uploads/2023/12/Resolution-HHS-24-37.pdf.