Tuesday March 11, 2025

Testimony before the House Behavioral Health and Health Care

HB 2385

Chair Patterson, Vice Chair Hayden, members of the Health Care Committee.

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 2385 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."

The Oregon Legislature passed Legislation in the 2024 session protecting certain action by insurers regarding 340B drugs by PBM's and insurers.

> *(b) "340B drug" means a covered drug dispensed by a covered entity, as those terms are defined in 42 U.S.C. 256b, that is subject to the cap on amounts required to be paid in 42 U.S.C. 256b(a)(1). (2) [An insurance policy or] A policy or certificate of health insurance or other contract providing [coverage for] for the reimbursement of the cost of a prescription drug to a resident of this state may not:*
> *(c) Discriminate in the reimbursement of a prescription for 340B drugs from other prescription drugs;*
> *(d) Assess a fee, chargeback, claw back or other adjustment for the dispensing of a 340B drug;*
> *(e) Exclude a pharmacy from a pharmacy network on the basis that the pharmacy dispenses a 340B drug;*
> *(f) Restrict the methods by which a 340B drug may be dispensed or delivered; or*
> *(g) Restrict the number of pharmacies within a pharmacy network that may dispense or deliver 340B drugs.*

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. Some examples of these programs include mandating purchases through specialty distributors, implementing geographic restrictions, data submission requirements, restrictions on contract pharmacies, and implementation of rebate models.

Due to these efforts, we believe the current language in HB 2385 is needed to include drug manufacturers in the regulations passed in the 2024 session 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 include more complete and specific language prohibiting these practices. SB 533 provides these protections. 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.

The program provides an opportunity to bring out-of-state money into the state without taxpayers having to foot the bill. The only exception would be states with a major drug manufacturing industry, which is not the case with Oregon. Accordingly, recent legislative activity in many states always points in the direction of protecting or expanding 340B rather than shrinking it. A large majority of states have protections against differential treatment by insurers and PBMs. Neglecting to implement such protections would lead to Oregon behind other states in terms of drug prices and overall economic development.

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 and safety net clinics, 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.

The opposition frequently states that the 340B program is found primarily in affluent zip codes and neighborhoods and is frequently provided by chain stores or PBM owned mail order pharmacies. It should be noted that it is due to the closing of local independent pharmacies and chain locations in rural, poor, or underserved areas. Safety net pharmacies who are legitimate entities under 340B provisions and the patients they serve have no choice but to use the pharmacies that are still open and available to them. These surviving outlets would be found in locations that might be described as “affluent” compared to the neighborhoods where the patients actually live.

Opponents also argue that the program may not be sufficiently regulated and audited by HRSA. Covered Entities perform audits of 340B use regardless of HRSA audits. Federal regulation of the 340B program is a national issue, and has no relevance to the regulation proposed HB 2385 which concerns the behavior of the manufacturers in Oregon.

I have included some background information on the 340B program, as well as some examples of language adopted by other states. We urge the committee to pass SB 533 with a do pass recommendation.

Sincerely, on behalf of OSHP,
Michael Millard BPharm MS FOSHP
Legislative Co Chair OSHP Legal and Regulatory Affairs Committee.