March 4, 2022

Leslie Lugo MS, RPh, BCPP
Director of Pharmacy
Office of Medicaid Policy and Planning
Indiana Family and Social Services Administration

Sent via Email: Leslie.Lugo@fssa.IN.gov

Re: Indiana Cost of Dispensing Prescription Drugs in Medicaid

Dear Ms. Lugo:

On behalf of the National Association of Chain Drug Stores and members operating pharmacies in Indiana, we are writing to share some concerns with the Indiana Office of Medicaid Policy and Planning (OMPP) potential changes to pharmacy professional dispensing fees.

On February 11, NACDS participated in a stakeholder meeting with OMPP to discuss its potential plans to change pharmacy professional dispensing fees based on the findings of a recent Myers and Stauffer Cost of Dispensing Survey. Based upon that study, OMPP announced its consideration of adopting a tiered professional dispensing fee. NACDS and its members have concerns that the proposed changes could result in participating pharmacies being reimbursed below cost for prescription drugs dispensed to Medicaid beneficiaries, potentially negatively impacting patient access.

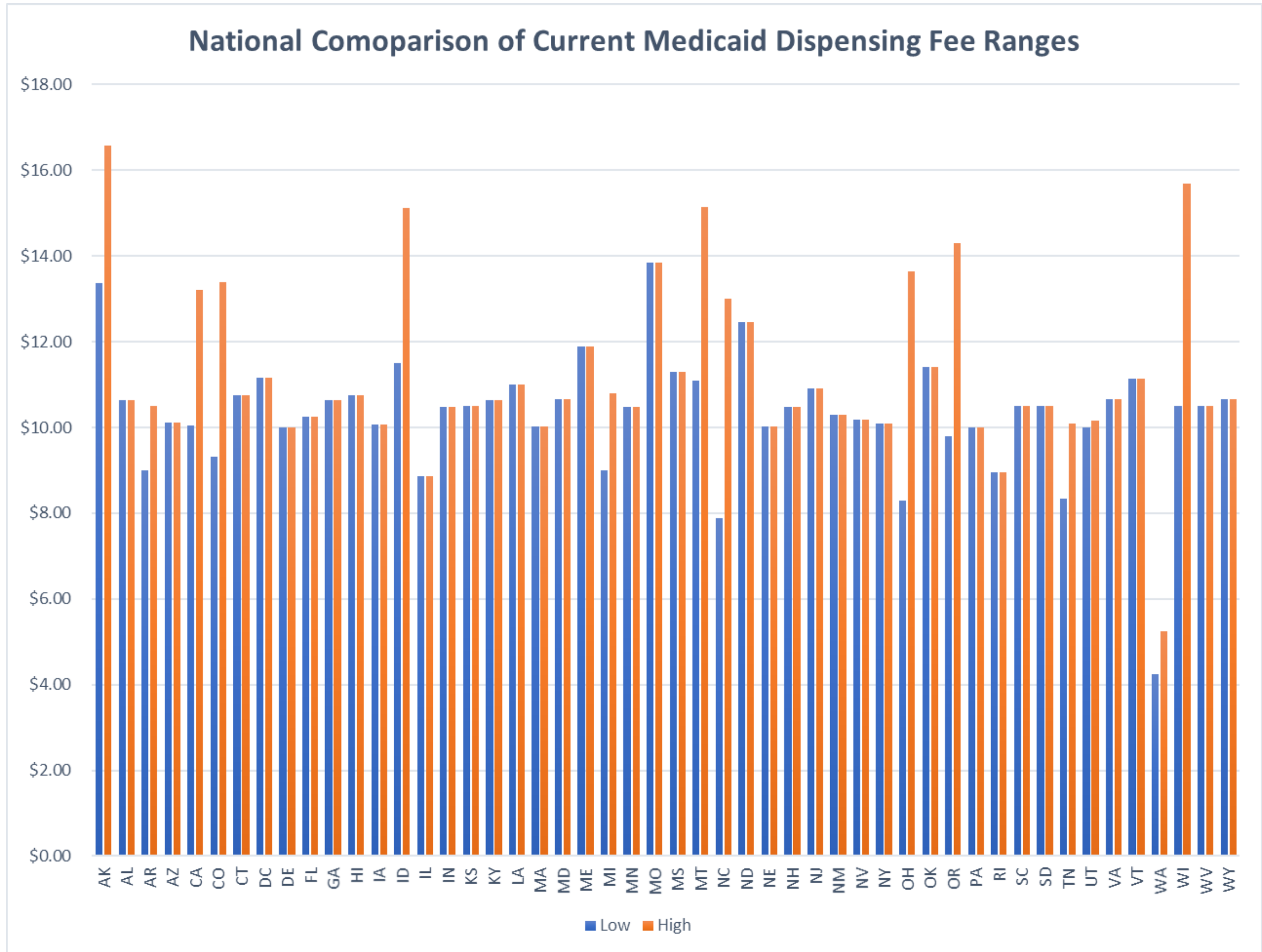
A. Fair and Adequate Professional Dispensing Fees

Aligning with the requirements for the 2016 Covered Outpatient Drugs Final Rule, OMPP has adopted a cost-based reimbursement based on the National Average Drug Acquisition Costs (NADAC) plus a professional dispensing fee of $10.48. In addition to the requirements established in the rule and per guidance provided by the Centers for Medicare & Medicaid Services (CMS), states are advised to establish professional dispensing fees based on a state, regional, or national cost of dispensing study that considers all components included in dispensing prescription drugs to Medicaid beneficiaries. Additionally, CMS has guided states that such studies should be done at minimum every 2-3 years to ensure that state dispensing fees not only resemble costs but also take into account inflation. NACDS' concerns are not regarding whether OMPP has aligned with the requirements established in the Covered Outpatient Drugs Rule or CMS guidance, but rather with the manner in which the study findings are being used and applied to determine pharmacy reimbursement.

Based on the April 2021 Myers and Stauffer Analysis of Pharmacy Dispensing Fees for the Indiana Medicaid Program Final Report, the study found a weighted mean professional dispensing based on Medicaid volume including specialty pharmacies of $8.87 and $8.71 not including specialty pharmacies. This is in comparison to the 2015 study, also done by Myers and Stauffer, which found a weighted mean Medicaid professional dispensing fee of $10.57. While the currently approved dispensing fee is still less than the findings of the 2015 study, it still accurately reflects the true cost to dispense a prescription drug when compared to a national average (**See Image Below**[1]). Despite being close to the national average, when comparing the two studies and considering the need to account for inflation, it is concerning

[1] https://www.medicaid.gov/medicaid/prescription-drugs/state-prescription-drug-resources/medicaid-covered-outpatient-prescription-drug-reimbursement-information-state/index.html

that the findings for the 2021 study would in fact decrease professional dispensing fees by $1.57 per prescription. This is even more concerning when comparing the two studies shows that the cost of professional labor has increased by 8 percent from 65 percent in 2015 to 73% in the 2021 study.



As stated on the February 11 stakeholder call, the state is taking the necessary actions to conduct a new study as the current 2021 study cannot be used because it was not conducted in the current budget cycle. Efforts to reimburse pharmacies for the true cost of the product must be accompanied by efforts aimed to help reimburse pharmacies at the true cost to dispense. Despite constantly escalating pharmacy costs, pharmacies have been paid Medicaid dispensing fees that are far less than the actual cost of dispensing a prescription. A 2020 comprehensive national cost of dispensing study by Abt Associates[2] reflects data from 2018 and shows the average overall cost of dispensing in 2018 was $12.40 per prescription (up from $10.55 in 2015), and $12.45 for Medicaid prescriptions (up from $10.30 in 2015). The study also shows the average specialty drug cost of dispensing in 2018 was $73.58 with an interquartile range of $40.12 to $86.48.

Medicaid dispensing fees should be fair and adequate to help to ensure that pharmacy providers are paid at rates that are sufficient to cover the cost of dispensing prescription drugs to Medicaid beneficiaries. It also is appropriate for these rates to provide a reasonable return above the pharmacies' costs of acquiring and dispensing prescription drugs

[2] https://www.nacds.org/pdfs/pharmacy/2020/NACDS-NASP-NCPA-COD-Report-01-31-2020-Final.pdf

to help to encourage a sufficient number of pharmacies agree to participate in the Medicaid program and maintain patient access to pharmacy services.

As OMPP and Myers and Stauffer are both aware, the dispensing fee should be based on an annual comprehensive cost of dispensing survey to accurately represent the cost of dispensing Medicaid prescriptions based on current market conditions and accurately reflect pharmacies' true cost to dispense prescription drugs. Additionally, dispensing fees should also take into consideration the employment cost index (ECI) adjustment and other inflation factors that would show a cost increase and inflation patterns that would affect dispensing fees on the yearly basis. We support the state's efforts to conduct a new study that is not only done in the current budget cycle but also done in a manner that removes discrepancies and accounts for inflation and growing labor costs. That said and considering the increase in professional labor costs and the increased cost to do business, over time, dispensing fees should be increased to keep up with inflation and not decrease as shown in the recent 2021 study or decreased further as predicted and stated at the stakeholder meeting.

B. Tiered Dispensing Fees are Anti-Competitive and Unjustified

In addition to the overall cost of dispensing being significantly lower than previous findings and the current fees, this study also offers findings that would implement tiered dispensing fees ranging from $8.12 to $11.53 based on total annual prescription volume. We believe that paying a higher reimbursement to certain providers based on certain characteristics is anti-competitive, creates an unfriendly and unfair business environment, and may violate the U.S. Constitution. To maintain equitability among pharmacy providers within the Indiana Medicaid program and avoid potential legal challenges, we strongly urge OMPP to consider one flat dispensing fee as currently used and approved in the current Medicaid State Plan to help to ensure that dispensing fees cover the cost of dispensing for all pharmacies.

As previously stated, the April 2021 Myers and Stauffer study has outlined a tiered dispensing fee based on total pharmacy volume.

1. for pharmacies reporting 0 to 65,999 prescriptions, the dispensing fee would be$11.53;
2. for pharmacies reporting between 66,000 and 102,999 prescriptions, the dispensing fee would be $8.30; and
3. for pharmacies reporting 105,000 and higher, the dispensing fee would be $8.12.

As previously stated, the current flat fee of $10.48, or a flat fee based on the newly conducted study should adequately take into account all labor costs and inflation and should be properly calculated to cover the cost of dispensing for all pharmacies rather than a tiered dispensing fee approach based on volume. If OMPP chooses to stick with its intent to move to a tiered system, at a minimum, we ask OMPP to use the flat fee from its cost of dispensing study as the bottom tier of a tiered system, and incrementally increasing for the top two tiers. With the current fee as a reference point, since $10.48 plus the ingredient fee represents the cost to pharmacies to dispense a given drug, any dispensing fee tier below that amount would result in some pharmacies being reimbursed below cost. Likewise, and considering the findings of the new study, if the flat fee of $8.87 plus the ingredient cost represents costs, then the current tiers included in the 2021 study would reimburse pharmacies in the bottom tier below costs at $8.12 per prescription, which is not only below the findings of the study but also undermines the CMS' requirement for pharmacies be reimbursed at cost. Additionally, if the tiers above are used to set the standard, we seek clarification on whether there would be another tier to account for those pharmacies that dispense between 103,000 to 105,000 prescriptions as that range is not indicated in the current study and should be addressed or corrected in any future studies. Lastly, assuming OMPP adopts a tiering system, we ask for clarification that the prescription volume determination used for setting the tier of dispensing for a given provider is made at the store level and not statewide for a chain of pharmacies.

As stated above, while the current approved fee of $10.48 aligns with the national averages, it is important to note that pharmacies in Indiana have long been paid Medicaid dispensing fees that are far less than the cost of dispensing a prescription. Because of the constantly escalating pharmacy costs driven by pharmacist labor shortages and

manufacturer drug price increases, the proposed tiers could potentially leave a large portion of the cost of dispensing a Medicaid prescription un-reimbursed to pharmacies.

Fair and adequate dispensing fees are of paramount importance as Indiana continues to reimburse for drug products based on acquisition cost. We believe that setting a differential reimbursement rate for one type of Medicaid provider based on size or type of business within an industry like pharmacy sets a very bad precedent in the state. Recent government studies have failed to find a consistent differential in the product acquisition costs of chain and independent pharmacies, with independent pharmacies achieving increased discounts through purchasing groups. In addition, federal law raises doubts about the legality and constitutionality of tiered reimbursement schemes, and Congress has expressed its displeasure within funding legislation about the tiering of reimbursement.

Moreover, as a practical matter, a tiering system that pays lower dispensing fees to higher volume pharmacy locations creates a disincentive for pharmacies to grow their Medicaid business and to become more efficient in dispensing drugs to Medicaid patients. Under the proposed tiering system, the greater the Medicaid business for a pharmacy and the more efficient a pharmacy becomes at dispensing Medicaid drugs, the lower their dispensing fee. This represents a perverse economic incentive to Indiana pharmacies that could result in access problems for Medicaid patients to their prescription medications.

Additionally, the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated (which includes companies) should be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). If Ohio decides to adopt a volume-based tiered dispensing fee, the state likely will find itself in violation of the Equal Protection Clause because it differentiates between otherwise similarly situated pharmacies based on prescription volume. Such a basis for discrimination has been found to be unlawful. Indeed, at least one federal court has stricken down another state's tiered reimbursement adopted on that same basis. *See Wal-Mart v. Knickrehm*, 101 F. Supp. 2d 749 (E.D. Ark. 2000) (finding that all pharmacies, regardless of volume, were similarly situated as the services they offered were similar, if not identical, making the tiered rates illegally discriminating).

Overall, Medicaid reimbursement for prescription drug products and dispensing costs should be based on the cost of the product delivered and the costs incurred in dispensing that product, not on the size or nature of the pharmacy providing beneficiary access to the prescription, as required by constitutional law. We support fair and adequate reimbursement under Medicaid and other public programs for all pharmacies throughout the state to help to protect access to the highest quality pharmacy services for all Indiana residents.

C. Specialty Drug Reimbursement

Along with our concerns with tiered dispensing fees, there is also concern that a tiered professional dispensing fee will result in retail pharmacies being reimbursed below costs for specialty drugs. In the Myers and Stauffer study, it was stated that the cost of dispensing specialty products was between $141.71 (unweighted mean) and $38.20 (weighted mean) per prescription. Under the tiered structure, there is an indication that these costs would be higher for specialty products. If the ingredient cost is coupled with a tiered professional dispensing fee, all specialty products will generally be reimbursed significantly below cost. To that end, we strongly urge OMPP to review and revise its reimbursement methodology for specialty drugs to avoid substantial reimbursement cuts on these products.

D. Impact on Patient Access

More broadly, on the issue of patient access, we believe that any changes in reimbursement that would ultimately result in pharmacy payments that are below cost would be inconsistent with the efforts by CMS to ensure that rate setting in the Medicaid program can sustain beneficiary access. We have concerns that tiered dispensing fees with no increase for specialty drugs would set reimbursement levels that are inconsistent with efficiency, economy, and quality

of care, in violation of federal law. If adopted, these changes could leave overall reimbursement levels too low to enlist a sufficient number of providers to ensure that services are available to program recipients at the same level as those services are available to the general population as required by §1902(a)(30) of the Social Security Act. Consequently, it may potentially jeopardize availability and access to care and providers for patients. This could have a detrimental effect on overall Indiana Medicaid program costs as beneficiaries who are not able to access prescription drugs on a timely basis or access them at all will be forced to seek higher-cost care such as more frequent visits to hospitals, emergency rooms, and doctors' visits.

Chain pharmacy recognizes the tremendous budgetary challenges states face in the light of the ongoing COVID 19 Pandemic and the subsequent need to control Medicaid program costs to help balance the state budget. However, the average net profit margin for pharmacies is just 2 percent, a profit margin that has been continuously shrinking due to increasing product, labor, and administrative costs. The implementation of below-cost tiered dispensing fees or dispensing fees that do not adequately account for all labor cost and inflation combined with below-cost reimbursement and dispensing fees for specialty drugs will pose a real threat to Indiana pharmacies' continued financial viability and, in turn, to the ability of low-income Indiana residents to access prescription drugs and pharmacy services. This is critical considering the role that community pharmacies have played and continued to play as key access points of care during the pandemic and for their day-to-day healthcare needs. We urge the OMPP to not only conduct a new study but also reconsider any changes that may compromise patient access to prescription drugs. In addition, we urge the OMPP to make the necessary adjustments to ensure that Indiana pharmacy access is maintained at the levels required under federal law.

E. Conclusion

Community pharmacies fully understand the level and complexity of changes that are required for states to fully accommodate the requirements of the Medicaid Covered Outpatient Drugs Final Rule. We remain committed to preserving Medicaid beneficiaries' access to their needed medications and the ability of our members to provide services to this important population.

On behalf of chain pharmacies operating in Indiana, we thank the OMPP for the opportunity to present our views and we welcome the opportunity to respond to any questions you may have. We look forward to meeting with you to discuss concerns in more detail and to continuing to work with you in your efforts to ensure needed services to Medicaid beneficiaries. For questions or further discussion, please contact NACDS' Christie Boutte, Senior Vice President, Reimbursement, Innovation & Advocacy, at cboutte@nacds.org or 703-837-4211.

Sincerely,

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer
National Association of Chain Drug Stores

###

NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate over 40,000 pharmacies, and NACDS' over 80 chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit NACDS.org.