



NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES

August 29, 2024

Representative Rob Nosse  
Chair  
House Behavioral Health and Health Care Committee  
900 Court St NE, H-472  
Salem, OR 97301

via email: [Rep.RobNosse@oregonlegislature.gov](mailto:Rep.RobNosse@oregonlegislature.gov)

### **Re: Pharmacy Benefit Manager Working Group Reimbursement Concepts**

Dear Chair Nosse,

On behalf of our members operating in Oregon, the National Association of Chain Drug Stores (NACDS) is writing to provide comments and pharmacy reimbursement concepts to the Pharmacy Benefit Manager (PBM) Working Group. States across the country, including Oregon, have recognized the acute need to enact PBM reform and to press forward with implementation, enforcement, and oversight despite PBMs' efforts to oppose or roll back such reforms. While more than 130 new PBM reform laws were enacted from 2021 to 2023, additional reforms are urgently needed.

As an industry, PBMs have been highly unregulated. As you know, PBMs claim to reduce prescription drug costs, but their business practices are key components of skyrocketing healthcare spending. PBM activities include unfair and opaque dealings with pharmacies with respect to reimbursement, network design, audit practices, constructing artificial barriers that limit patient choice and competition, self-referring patients to their own mail-order and/or retail operations, switching patients to more expensive medications to benefit the PBM, and questionable use and disclosure of sensitive patient information. PBMs claim that their ability to negotiate with drug manufacturers and pharmacies reduces overall prescription drug costs. However, despite their claims, overall prescription drug spending and patient out-of-pocket costs continue to steadily increase. Simply put, without meaningful PBM reform more dollars are flowing to PBMs instead of reducing Oregonians' prescription drug costs and safeguarding access to their trusted and convenient pharmacies.

### **Pharmacy Reimbursement Policy Proposal**

Pharmacy reimbursement should be comprised of two parts: 1) the ingredient cost for the prescription drug; and 2) a professional dispensing fee across payer markets to help ensure reasonable reimbursement and sustainable pharmacy service for Oregonians. Without necessary rate floors that ensure reasonable and sufficient reimbursement for community pharmacies, inadequate or below-cost reimbursement to pharmacy providers and pharmacies is likely to result. This outcome could force pharmacies to either operate at a loss, be unable to stock certain medications, or worse, potentially close their doors permanently—negatively impacting

Oregonians by ultimately worsening patient outcomes, reducing medication adherence, and increasing prescription abandonment and hospitalizations.

### **Network Policy Proposal**

Network and contract barriers put in place by PBMs, pose great consequences to Oregonians, resulting in the likelihood of community pharmacies that are ready and willing to serve unknowingly ineligible patients from providing important pharmacy services, and from patients across Oregon experiencing reduced access to certain pharmacies which effectively deteriorates patient choice, adversely impacting health outcomes, and can cause unnecessary delays and interruptions in patient care. Oregonians should have the choice and flexibility to utilize the pharmacy that is accessible and best meets their different and distinct healthcare needs and should not be forced or steered to inadequate pharmacy networks or face more costly options at non-preferred and/or out-of-network pharmacies.

### **Business Practices Policy Proposal**

NACDS strongly supports including additional reforms in a forthcoming legislative proposal, including a prohibition against spread pricing. Spread pricing is a manipulative tactic by which PBMs profit by charging a health plan more for a drug than it will reimburse the pharmacy dispensing that drug for. The PBM retains the difference for themselves, resulting in unnecessary cost inflation being introduced into the healthcare system for the sole benefit of the PBM. Additionally, NACDS supports a prohibition against a PBM reimbursing any pharmacy located in the state of Oregon for an amount less than the amount that the PBM reimburses a PBM-affiliated pharmacy for dispensing the same prescription drug.

It is imperative that any forthcoming legislative proposal prohibit PBMs from engaging in retaliation, which effectively prevents a pharmacy or pharmacist from discussing payment details with employers or payers, as well as disclosing information that is evidence of a violation of a state or federal law, rule, or regulation through the course of government proceedings. Lastly, that any forthcoming legislative proposal should require that PBMs act in good faith and fair dealing in performance of all its contractual duties and should further include language that allows for enforcement if a PBM fails to do so.

### **Proposed Pharmacy Reimbursement and Networks Legislative Concepts to Ensure Oregonians' Continued Access to Affordable Prescription Drugs**

ORS 743A.062 is amended to read:

A policy or certificate of health insurance or other contract, including pharmacy benefit manager contracts, providing for the reimbursement of the cost of a prescription drug to a resident of this state:

Shall 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.

**Contract Terms and Conditions.** – Contracts terms and conditions offered by a policy or certificate of health insurance or other contract, including pharmacy benefit manager contracts, providing for the reimbursement of the cost of a prescription drug to a resident of this state shall be reasonable and relevant.

**Reasonable and Relevant.** – Reasonable and relevant contract terms and conditions offered by a policy or certificate of health insurance or other contract, including pharmacy benefit manager contracts, providing for the reimbursement of the cost of a prescription drug to a resident of this state shall not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the ingredient cost for the prescription drug and the professional dispensing fee which shall be set at one hundred percent (100%) of the Medicaid fee-for-service reimbursement, pursuant to the Centers for Medicare and Medicaid Services' National Average Drug Acquisition Cost and the cost of the professional dispensing fee as set by the Oregon Health Authority.

If the Centers for Medicare and Medicaid Services' National Average Drug Acquisition Cost is not available at the time a drug is administered or dispensed, a policy or certificate of health insurance or other contract, including pharmacy benefit manager contracts, providing for the reimbursement of the cost of a prescription drug to a resident of this state shall not reimburse in an amount that is less than the wholesale acquisition cost of the prescription drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee as set by the Oregon Health Authority.

## Conclusion

NACDS appreciates the PBM Working Group's sincere efforts to reduce prescription drug costs and enhance affordability for patients across Oregon and welcomes the opportunity to further collaborate to address these serious concerns. We strongly encourage the incorporation of rate floor reimbursement and network adequacy safeguards for all pharmacies, as well as the additional reimbursement concepts mentioned above, in any forthcoming legislative proposal. NACDS will continue to advocate to ensure increased patient access, and fair and adequate reimbursement for pharmacists, pharmacies of all sizes, and the Oregonians they serve. For questions or further discussion, please contact NACDS at [SGuckian@nacds.org](mailto:SGuckian@nacds.org) (Sandra Guckian, Vice President, State Pharmacy and Advocacy).

Sincerely,

A handwritten signature in black ink, appearing to read "Steven C. Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

cc: Brian Mayo, Oregon State Pharmacy Association