To: House Health Care Committee

From: Oregon State Pharmacy Association & Oregon Society of Health-System Pharmacists

Re: Opposition to HB 4109

While understanding and appreciating the intent of HB 4109, the Oregon State Pharmacy Association and the Oregon Society of Health-System Pharmacists respectfully request that you oppose HB 4109 because the bill has unintended consequences that will impose administrative burdens on pharmacies and will not likely achieve the desired results of saving the State money.

Background

The state currently reimburses pharmacies for Medicaid prescriptions based upon the Average Actual Acquisition Cost (AAAC) of a specific generic drug. This cost value is determined by taking an average of actual invoice costs mandatorily submitted by participating pharmacies. Since all pharmacies currently negotiate the lowest prices possible directly with the manufacturer or through their wholesaler purchasing programs, the state is already enjoying the benefits of the competitive bidding process without having to incur the cost of managing a program.

Non-Medicaid generic prescriptions are generally paid based upon a Maximum Allowable Cost (MAC) that is defined by the Prescription Benefit Manager processing the prescription. This MAC price is used as the cost basis for every generic prescription drug no matter what the actual cost to the pharmacy is. The MAC pricing lists are very aggressive in setting a cost basis that truly reflects the market costs after negotiations. In fact, in State Fiscal Year 2010, Indiana's MAC program saved the state $88.5 million. Generic Drug costs per prescription are very low in comparison to brand name drugs. Any additional discounts that are not already being captured by the current process would be very small. It is very likely that any savings realized from the proposed bidding process would be less than the cost to administer the program.

HB 4109 is based upon the premise that the state can drive down its cost of generic drugs by negotiating discounts directly with the manufacturers of generics drugs, similar to what currently occurs with brand name drugs. However, this premise for generic drugs is incorrect for several reasons:

HB 4109 May Result in Decreasing Competition

HB 4109 essentially gives the Oregon Health Authority (OHA) the ability to monopolize the generic market by purchasing and distributing generics sold and dispensed in Oregon by removing pharmacies from the negotiation process. As illustrated above, pharmacies negotiate wholesale rates with drug manufacturers in order to remain competitive and keep prices low. However, HB 4109 requires the state to become involved in the negotiation process. Removing pharmacies' authority to negotiate removes competition and instead, gives drug manufacturers the ability to set drug rates, likely at a higher rate than previously negotiated.

In addition, competing generic manufacturers lose the incentive to negotiate lower prices with pharmacies or their representatives. When the state mandates a specific drug, the dispensing pharmacy will feel the negative financial repercussions when it has to pay a much higher price for the specific generic mandated by the state, at the state determined cost, than they would otherwise currently pay. HB 4109 simply narrows the options currently available to pharmacy when negotiating the best price for the medication they dispense. HB 4109 could in turn drive up the cost of providing pharmacy services as pharmacists would need to charge more to cover the cost of the medication.

HB 4109 and Drug Shortages

HB 4109 limits the options available to community pharmacies to obtain the medications they dispense and would drive up costs due to this limitation. In addition, in the past two years, pharmacies have seen more manufacturing recalls and drug supply shortages than ever before. There are hundreds of recalls occurring every year. Recalls alone should cause concern that all generics are not the same, but drug recalls also lead to drug shortages. If the state limits itself to one "preferred" generic of each type of drugs, patient care will suffer as patients cannot get the drugs they need.

All Generics are NOT the Same

The U.S. Food and Drug Administration (U.S. FDA) states that the current regulations guarantee that the approved Antiepileptic Drugs (AEDs) formulations of each specific AED can be used interchangeably without concern for safety or efficacy and that no additional testing is needed when formulations of the same AED are interchanged. **However, physicians and patients, in several surveys including one performed of AES members in 2007, express a majority opinion that the various formulations of the same AED are not always therapeutically equivalent in every patient.** Positions taken by several organizations including the American Academy of Neurology, the Epilepsy Foundation and the International League Against Epilepsy (French Chapter) reflect this equipoise and advocate for physician and patient consent prior to switching formulations. The AES recognizes that controlled, prospective data on therapeutic equivalence of different AED formulations in people with epilepsy is not available because appropriate studies have not been conducted.

HB 4109 Imposes an Administrative Burden on Pharmacies

The proposed competitive bidding program will create access issues for patients and place undue hardships upon the pharmacies trying to serve them. The pharmacy would have to carry duplicate inventory on every generic drug where the state preferred source was different from the pharmacies preferred drug, thus driving up inventory costs. If the pharmacy did not have the state's preferred brand of generic in stock, it would be faced with the dilemma of incurring a penalty and selling the prescription at a loss or having the patient wait until it could obtain the state preferred drug.

In addition, pharmacies that use dispensing machines/robots to package adherence cards for nursing homes and patients with mental health issues will have to pay additional cost for having each cassette recalibrated to stock the intended state "preferred" generic. Some of these "preferred" generics may not work in automated equipments at all, again raising the cost of patient care.

It is our firm belief that this bill will increase the states cost to manage and administer the program while delivering little to no significant savings. As such, we cannot support HB 4109.