

**Oregon State Senate  
Health Care and Human Services Committee  
Testimony of the National Community Pharmacists Association  
(Michele M. Belcher, RPh. – NCPA Second Vice President)  
And Pharmacist/Owner Grants Pass Pharmacy  
March 5, 2013**

Good afternoon Mr. Chairman and members of the Committee.

My name is Michele Belcher and I am Second Vice President of the National Community Pharmacists Association (NCPA) and a second generation pharmacist and pharmacy owner of Grants Pass Pharmacy in Grants Pass. I provide this testimony today in support of S.B.402---legislation that would establish a fair and reasonable degree of transparency over how Pharmacy Benefit Managers (PBMs) determine reimbursement to pharmacies for multiple source generic drugs. Under the current system, pharmacies contract with PBMs in order to participate in pharmacy networks and in order to keep their doors open for business. For independent community pharmacies in particular, most pharmacists are essentially presented with “take it or leave it” contracts. However, these contracts provide no insight or guidance to pharmacies as to how they will be reimbursed for generic drugs. Pharmacies must sign these contracts not knowing what they will be paid on multi-source generics as these contracts do not provide specific rates for payment on generic medications.

NCPA represents America’s independent community pharmacists, including the owners of more than 23,000 community pharmacies, pharmacy franchises and chains. Together, they employ over 300,000 full-time employees and dispense nearly half of the nation’s retail prescription medicines. In Oregon alone there are 153 community pharmacies that employ an estimated 1,600 citizens. These pharmacist small business owners are responsible for over \$586 million in annual sales making up a vital component of Oregon’s “Main Street Economy.” Community pharmacists serve as trusted members of their communities in which they serve as both small business owners and health care providers. Their concerns must be taken seriously and their interests should be protected against the abusive and unfair business practices of the Pharmacy Benefit Manager or “PBM” industry.

A “Maximum allowable cost” or “MAC” list refers to a payer or PBM-generated list of products that establishes the upper limit, or maximum amount, that a plan will pay a pharmacy for certain generic drugs. Essentially, no two MAC lists are alike and each PBM has free rein to pick and choose products for their MAC lists. There is no standardization in the industry as to the criteria for the inclusion of drugs on MAC lists or for the methodology as to how the PBM will determine the maximum price or how it is changed or updated. NCPA has worked with Oregon pharmacists who state MAC rates often change multiple times a day. An amount a pharmacy is paid for in the morning for a particular medication can change to a different rate for the same medication the same afternoon. This process is further complicated by the fact that PBMs frequently maintain multiple MAC lists for the same health plan-- one for the health plan and one for the pharmacy. This provides PBMs with the ability to obtain significant revenues through deceptive practices. For pharmacies, the MAC process is analogous to a

carpenter contracting to build a house for a customer without knowing how much they will be paid, how much their materials will ultimately cost or how or when those costs may change.

For example, PBMs will typically use an aggressively low MAC price list to reimburse their contracted pharmacies and a different, higher list of prices when they sell to or bill their plan sponsor for the same drugs. Essentially, the PBMs reimburse low (to pharmacies) and charge high (to health plans) with their MAC price lists, pocketing the significant “spread” between the two prices. Most plan sponsors are unaware that multiple MAC lists are being used and have no real concept of how much revenue the PBM retains. PBMs often deny this practice. However, recently during legislative testimony representatives of the PBM industry directly admitted to this practice while being questioned by state legislators.

S.B.402 includes needed provisions that would require the PBM to disclose to the pharmacy the basis for the methodology and sources utilized to determine MAC pricing. It also establishes a procedure in which MAC rates could be updated or modified in order to remain consistent with pricing changes in the marketplace. Also, this legislation would establish a reasonable appeals process under which a pharmacist could contest or appeal a listed MAC rate as well as establish needed guidelines governing when and under what circumstances drugs could be placed on a MAC list. It is critical that those drugs that appear on a MAC list are readily available to all pharmacies in the state and that there are a sufficient number of therapeutically equivalent sources.

PBMs may claim that the provisions of S.B.402 infringe upon or would force them to disclose “proprietary” information that could be somehow “damaging” or “expensive” to the overall health care system. However, S.B.402 would not require that any disclosures be shared with marketplace competitors of the PBMs. Instead, S.B.402 would simply require that the PBM “disclose” needed information to the other interested party to a given contract!

Pharmacists simply wish to know how much they will be reimbursed and how such reimbursement is developed. Also, if a pharmacist or “customer” of the PBM notices that a given figure appears to be flawed, S.B.402 would provide them with reasonable recourse to correct that error with the PBM through a defined appeals process. NCPA completely agrees that confidentiality should remain intact throughout this process be it for the pharmacy or the PBM.

PBMs may also claim that this legislation is “one-of-a kind” and completely unprecedented. However, NCPA is pleased to report that legislation similar to S.B.402 was recently favorably reported out of its Committee of jurisdiction in Oklahoma. In Kentucky, MAC transparency legislation was unanimously voted out of the Senate 37-0 on February 27th. North Dakota also favorably moved “MAC transparency” out of committee and this bill was also voted unanimously out of the House of Representatives by a vote of 93-0 on February 25<sup>th</sup>. Such actions demonstrate that state policy makers are identifying and acting upon a need to enact legislation such as S.B.402 as a means to ensure a fair business environment. As an Oregon pharmacist, small business owner and officer of the National Community Pharmacists Association I respectfully request that Oregon join these states and send a message to the nation that Oregon believes in fair and reasonable standards to ensure a friendly small business environment.

Finally, S.B.402 would also provide either health-plan sponsors or payers with critical information as to their prescription drug costs. S.B.402 includes a separate section that would require the PBM to disclose to the health plan sponsor how MAC lists are used for their plan including the existence of multiple MAC lists and whether or not MAC lists are used for drugs obtained through PBM-owned mail order pharmacies. These disclosures would allow health plan sponsors to truly evaluate just what they are getting for their money and whether or not the PBM is doing its job.

In summary, neither plan sponsors nor contracted retail network pharmacies have any transparency into the MAC process. They are required to blindly agree to contracts. Retail pharmacies are not informed how products are added or removed from a MAC list or the methodology that determines how reimbursement is ultimately calculated. However, pharmacies *must* contract with PBMs to provide services and participate in plans without having this critical information.

In conclusion, NCPA and myself urge the support of S.B.402 —legislation that will provide fair and reasonable transparency to pharmacies and plan sponsors regarding the services they are paying the PBMs to provide.

Thank you very much for your time and I am happy to answer any questions that you may have.....