

The Honorable Representative Mitch Greenlick, Chair
Honorable Members of the House Committee on Health Care
Oregon State Legislature
900 Court St. NE
Salem Oregon 97301

April 2, 2015

Re: National Community Pharmacists Association (NCPA) Strong Support of House Bill 2875

Dear Representative Greenlick:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in strong support of the amendments being proposed to House Bill 2875 (*from here forward referenced as H.B.2875*). This legislation would strengthen an existing law that was enacted during the 2013 legislative session, H.B. 2123/Chapter 570¹. The intent of H.B. 2123 was to ensure a fair and transparent pharmaceutical marketplace for independent community pharmacies and their patients in the state Oregon. Oregon was one of the first states to enact such a law and since then, has become a model for other states to follow. H.B. 2875 will not add any additional regulations and does not expand the existing law to other subject matters. H.B.2875 simply ensures that the law currently in place will be properly complied with by adding and amending language that reinforces the original intent of the law.

NCPA represents the pharmacy owners, managers and employees of more than 23,000 independent community pharmacies, pharmacy franchises, and chains across the United States. NCPA members dispense nearly half of our nation's retail prescription medications. In the state of Oregon, there are 144 independent community pharmacies that employ approximately 1,426 citizens full-time. Community pharmacies represent a vital component to Oregon's "Main Street" economy.

Generic drug pricing or "MAC transparency" legislation has become a national trend with 17 other states having enacted similar laws. This trend has impacted federal programs as well, with the United States Center for Medicare and Medicaid Services (CMS) now requiring MAC transparency within the Medicare Part D program². As stated above, Oregon was one of the first states to take this important step. Although these laws have taken necessary and critical steps towards ensuring a fair and transparent small business and healthcare delivery marketplace, many states are facing challenges with proper enforcement and compliance. In order to determine the effectiveness of these laws, NCPA recently conducted a national survey of its membership. The survey revealed that 42.9% of NCPA members in states with MAC transparency laws enacted, felt that since the passage of the law in their state, the amount of time it takes a PBM to update pharmacy reimbursement rates has actually *worsened*—while 53.4% said that the rate of update speed has remained the same. The data revealed that although the intent of the legislation is to increase transparency, PBMs have simply failed to

¹ Oregon Chapter 570/H.B.2123; https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0570.pdf

² 42 CFR Parts 417, 422, 423, et al. Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Final Rule; 18. Prescription Drug Pricing Standards and Maximum Allowable Cost (§ 423.505(b)(21))

comply, requiring some states to revisit their legislative language to ensure proper implementation and compliance. Like Oregon, Arkansas and Kentucky are currently running legislation that would strengthen their existing transparency laws. As recently as Wednesday April 1, 2015 the Governor of Arkansas signed legislation strengthening Arkansas 2013 MAC transparency act into law (Act 900 of 2015). Also, states currently advancing legislation (i.e. Georgia - 2015, Rhode Island - 2015, Connecticut - 2015) or having done so since Oregon enacted H.B.2123 into law, are including many of the amendments you see before you in H.B. 2875.

H.B. 2875 takes many steps that will ensure that the intent of Oregon’s MAC transparency law is not undermined by PBMs, some of which have exploited loopholes in similar laws in order to evade compliance. PBMs have found many ways to deliberately circumvent the intent of MAC transparency laws. For example, MAC lists may be updated in accordance with the state law, however, they may not be provided to a pharmacy in a timely manner. Additionally, because the law does not specifically include language that requires the PBM to then *utilize* that updated MAC list for pharmacy reimbursement, as is the intent of the law in the first place, the PBM simply does not adjust the reimbursement prices. In essence, the PBMs have been strategic in identifying loopholes and ambiguity in state MAC laws and have then exploited these weaknesses. H.B. 2875 attempts to close some of these loopholes.

Another valuable example of a necessary provision within H.B. 2875 expands the definition of “Network Pharmacy” to include Pharmacy Services Administrative Organization (PSAO), a third-party entity that contracts on behalf of and provides additional services for pharmacies. Often times, community retail pharmacies contract with a PBM through a PSAO. A PBM may avoid complying with a law if the pharmacy contracts with a PSAO because technically, the law is written to apply to the contracting relationship between the PBM and pharmacies, without explicit reference to any other contracting entities that work on behalf of pharmacies. To ensure that all contracting relationships are enforceable under the provisions of the bill, PSAO’s or other contracting agents must be clearly identified as falling under the protective provisions of the bill.

In conclusion, NCPA urges the support of H.B. 2875—which would strengthen Oregon’s already existing legislation to ensure fair and transparent pharmaceutical marketplace. This much needed legislation takes the above mentioned and many other steps to ensure that the true intent of Chapter 570 is properly implemented and enforced. NCPA would like to emphasize that the current law does not go above and beyond the intent of Chapter 570. Oregon pharmacists are not asking anything more of the legislature than to support the intent of the original law and ensure that that law is complied with properly through the addition of the amendments in H.B.2875. If you have any questions about the information contained in this letter or wish to discuss in greater detail, please do not hesitate to contact me at matt.diloreto@ncpanet.org or at (703) 600-1223.

Sincerely,



Matthew J. DiLoreto
Senior Director - State Government Affairs

CC: Members of the House Committee on Health Care