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May 4, 2023

Representative Julie Fahey
Chair, House Committee on Rules
900 Court St. NE, H-295
Salem, Oregon 97301

Re: HB 2725 & HB 3013 – Pharmacy Benefit Managers

Dear Chair Fahey:

AHIP respectfully opposes HB 2725 and HB 3013, which attempt to impose additional restrictions on health plans' pharmacy benefit designs and the activities of pharmacy benefit managers (PBMs). Not only will these bills raise costs for consumers, but they also impermissibly regulate the health coverage provided by large Oregon employers.

Everyone should be able to get the medications they need at a cost they can afford. Pharmacy costs now represent over 22 cents out of every dollar of premium spent on health care.ⁱ But drug prices continue to rise with no end in sight, and hardworking families feel the consequences every day. The original list price of a drug, determined solely by the drug manufacturer, drives the entire pricing process. The problem is the price: If the original list price is high, then the final cost patients pay will be high. Insurers are unequivocally committed to lower drug costs for everyone – for patients, families, large and small employers, and state payers.

HB 2725 and HB 3013 will raise costs for consumers.

Instead of attacking drug prices at the source, these bills amend health plan benefit designs and impose new regulations on PBM activities that are used to keep costs low for consumers. These bills would impose extensive requirements and prohibitions on PBMs and insurers related to pharmacy networks, pharmacy reimbursement, and audits used to investigate fraud, waste, and abuse.

One such concerning provision creates an “any willing provider” law, prohibiting insurers or PBMs from denying a pharmacy/pharmacist a network contract if the pharmacy/pharmacist agrees to the terms and conditions as other network providers. AHIP strongly opposes any attempt to create an “any willing provider” law. Insurers and PBMs develop pharmacy networks to promote quality standards, patient safety, and better value; this new provision undermines these important negotiating tools by requiring insurers or PBMs to accept any and all pharmacies that meet the minimum standards for contracting.

The FTC has opined that the selective contracting that insurers and PBMs use to create networks increases the intensity of competition among providers, which is manifested in lower prices.ⁱⁱ They also found that “any willing provider” requirements can result in higher prices because they reduce sellers' willingness to cut prices aggressively. Finally, the FTC reports that these laws may substantially reduce competition among pharmacies and may not give consumers any additional choices.

HB 3013 jeopardizes the protection that Oregon employers rely upon under ERISA.

In addition to our concerns about the substance of the bill, we are also very concerned about the expanded applicability to self-insured employers in the -2 amendments to HB 3013.

Oregon employers rely upon ERISA and its preemption provisions, which afford them consistency and uniformity of health plan administration. AHIP supports a single, cost-saving, national standard of regulation for employer-provided health care coverage – this ensures more affordable coverage for all that is easier to understand. A 50-state patchwork of complicated and inconsistent mandates for employer-provided coverage would cause confusion and make coverage more expensive for Oregon employers and employees.

ERISA's preemption provisions were upheld in the Supreme Court case *Rutledge v. PCMA*. This case affirmed the long-standing precedent that state laws are preempted by ERISA when they impact a core function of health plan administration or directly relate to the health plan. In *Rutledge*, the Court enumerated a very narrow set of activities that states could regulate.

The Groom Law Group conducted a detailed analysis of the provisions in HB 2725 and HB 3013 (as amended by the proposed -2s) to determine which provisions are preempted by federal law. They found that a number of the provisions in these bills are preempted by ERISA because they impose acute and direct economic impacts on plans and/or bind the benefit design choice of health plans administered by PBMs. We have included that analysis with these comments.

We should focus on driving down prices at the source – the price of the drug set by pharmaceutical manufacturers. By taking this approach, we stand to benefit everyone, including those individuals and employers who are struggling enough already. AHIP and our member companies stand ready to help you with that endeavor.

Sincerely,



Kris Hathaway
Vice President, State Affairs

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

ⁱ [Where Does Your Health Care Dollar Go?](#) AHIP. September 2022.

ⁱⁱ [FTC Letter to Rhode Island AG Patrick Lynch and Senate Deputy Majority Leader Juan Pichardo](#). April 8, 2004.