INDEPENDENT PHARMACIES OF MARYLAND

WORKING TOWARDS A STRONGER HEALTH

HB 1007

Maryland Medical Assistance Program and Managed Care Organizations That Use Pharmacy Benefit Managers-Reimbursement Requirements

Position of Independent Pharmacies of MD: **FAVORABLE**

WHAT THIS BILL DOES:

HB 1007 sets minimum reimbursement levels to pharmacies under Medicaid at least equal to the NADAC acquisition cost of the drug plus a professional dispensing fee determined in accordance with the most recent in state cost-of-dispensing survey.

Medicaid reimbursements to pharmacies are notoriously low. According to the 2020 Myers and Stauffer study conducted for MDH, the average is about 50 cents as a dispensing fee per prescription, well below actual costs. Pharmacies report that the true reimbursement fee is actually about 35 cents. This business model is not sustainable and dispensing fees need to be significantly boosted under Medicaid.

IDMD strongly supports this bill. But it also recognizes that there are substantial differences in the structure and revenue streams of different types of pharmacies.

For example, PBMs and their affiliated pharmacies, including PBM mail order pharmacies, are unbelievably profitable, as PBMs have the power to steer business to their affiliated pharmacies, the power to require the use of their mail order pharmacies, the power to determine who will be included in their networks, the power to set drug plan terms on a take it or leave it basis; in addition, they reap large profits through rebates from drug companies and through spread pricing. Moreover, PBM and PBM affiliated pharmacies are often a part of the same larger corporation. So that all of the profits that derive from the power of the PBM flow to the same corporate pocket. For fiscal year ending 2021, just the PBM division of CVS Caremark had revenues of $153 Billion, up 8% over a year ago. Independent pharmacies have none of these revenue stream advantages, or access to these unbelievable revenue streams.

Other large chain pharmacies also have access to lucrative revenue streams that are not available to small, independent pharmacies. At least one owns a substantial stake in pharmaceutical wholesalers, including a 28% equity interest in AmerisourceBergen, one of the largest pharmaceutical wholesalers in the world, distributing to thousands of retail, mail order, and specialty pharmacies. This information is publicly available through the Securities and Exchange Commission, Form 10-K. Of course, significant revenues flow from this large equity interest.

In light of these significant differences between pharmacies, and their revenue structures, IPMD fully supports the sponsor's amendment that HB 1007 should be amended to

provide that the following are exempt from the bill, and not entitled to the minimum reimbursement levels set out in the bill: a mail order pharmacy; a pharmacy owned by, or under the same corporate affiliation, as a PBM; a pharmacy that holds a substantial equity interest in a pharmaceutical wholesaler.

States have the legal right, and often do, draw distinctions between businesses based on equitable and competitive factors, through subsidies, grants, financial incentives, ownership requirements, and in this case, reimbursement by a clear "market participant", Medicaid, which is expending state funds to purchase drugs for the Medicaid program. See, for example, *Exxon Corp. v. Governor of MD*, 37 U.S. 117 (1978); *Hughes v. Alexandria Scrap Corporation*, 426 U.S. 794 (1976); *Asante v. Cal Department of Health Care Services*, 886 F.3d 795 (9th Cir. 2018).

We urge a Favorable report.

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