

Hello,

I am a pharmacist practicing here in Washington State. I am the co-owner of an independent pharmacy operating in a rural community in eastern Washington.

I am writing this to plead with the OIC to make some major changes during this current rulemaking session in how they are enforcing the PBM reform laws that have been enacted in our state over the last several years. Our state legislators first enacted PBM reform laws in 2014, then revised and added provisions in 2017, 2020, and 2024. Among other things, these laws gave oversight and enforcement authority to the OIC. While I commend the efforts of your office to this point, we are still falling short of the intentions of the laws. Which is evident with nearly daily headlines coming out across the country pointing out the egregious predatory practices of the PBMs that lead to negative impact on the healthcare system and directly harming patients of our country.

For example,

“Ohio Attorney General Sues Express Scripts, Prime Therapeutics and 5 Others, Blaming Exorbitant Drug Prices on Their Collusion,”

“Ohio Auditor releases stunning Medicaid PBM audit report showing PBMs pocketed \$224 million in spread pricing,”

“Kentucky saved \$282 million with single PBM,”

“OIG audit of federal employee pharmacy benefits plan reveals express scripts retained \$44.9 million in overpayments and unreported rebates,”

“Tyson Foods drops CVS for startup to manage staff pharmacy benefits.”

Here in Washington State, *“Attorney General Bob Ferguson and the Washington State Health Care Authority announced today that managed health care giant Centene will pay \$19 million to Washington state. The payment resolves allegations that the Fortune 50 company overcharged the state Medicaid program for pharmacy benefit management services.”*

A study recently released that was conducted by 3 Axis Advisors titled “Understanding Drug Pricing from Divergent Perspectives, State of Washington Prescription Drug Pricing Analysis” examined the reimbursement experiences of Washington community pharmacies and the cost experiences of Washington commercial plan sponsors. Among other things, this study found:

- Plan sponsor (employer) costs increased by 30% while commercial pharmacy reimbursement decreased by 3% between 2020-2023.
- PBM-affiliated mail-order pharmacies had prescription markups that were more than three times higher than the markups at retail pharmacies.
- For a subset of claims comprised mostly of costly “specialty drugs,” plan sponsors were charged more than \$1,000 in markups per prescription at PBM-affiliated mail-order pharmacies despite retail pharmacies typically filling those medicines at a loss.

While the OIC has taken steps to implement the intended protections of the laws, the current system is being under-utilized because it puts too much of the onus on small pharmacies, who are being taken advantage of by the PBM's, to be the ones who must identify where the PBM's are violating our laws and report it to the OIC in hopes that actions will be taken. While pharmacist appreciate that we have some sort of a reprieve, it is not the intention of law that our cry for help is the only thing that initiates the enforcement of the laws.

*RCW 48.200.030(2)(b) To apply for registration under this section, a health care benefit manager must: Pay an initial registration fee and annual renewal registration fee as established in rule by the commissioner. The fees for each registration must be set by the commissioner in an amount that ensures the registration, renewal, and **oversight activities are self-supporting.***

I am pleading with you to develop a PBM compliance department within the OIC including qualified individuals with insight into the industry. Mainly at least one pharmacist who has experience navigating the current convoluted, PBM controlled, medication purchasing system. The aforementioned RCW was specifically enacted to ensure the OIC would have the financial resources necessary to conduct the needed oversight activities. The people of our state will greatly benefit if the OIC actively seeks violators of the PBM reform laws and takes the necessary steps to enforce them. Many of the current laws provide protections for things that a pharmacist would not be able to prove are happening, and blow the whistle on, like one of the findings from the 3 Axis Advisors study. PBM's are directly violating RCW 48.200.280(2)(k) and reimbursing their affiliate pharmacies at higher rates than other pharmacies. If the OIC had a dedicated PBM compliance department to audit and investigate the PBMs things like this would be curbed.

The current process in place for pharmacists to appeal underpayments is much too onerous and time consuming for a busy healthcare professional to manage at scale. I just ran a report, and my pharmacy has been underpaid by PBMs, in the first five months of 2024, on 8,697 claims. With the current OIC system there is no way I could submit and track all of these claims as appeals.

I know it is a heavy lift, but the OIC is the agency that has been tasked with enforcing our PBM reform laws. The OIC should be charging the PBMs high enough registration fees that they can hire sufficient staff and data analysis experts to work with pharmacies to gather claims information and ensure pharmacies are being paid fairly. The bulk of this lift needs to be shouldered by the OIC and funded by the PBM's registration fees and civil penalties levied.

Another reason the OIC needs to take some of the burden off the pharmacies is that many pharmacies are fearful of retaliation by the PBMs. Many pharmacies are not utilizing the current OIC appeals and complaint processes. The PBMs are huge companies with limitless resources, and they already take advantage of small pharmacies but we need to be in contract with them because of the monopoly they hold on the medication market. The 3 big PBMs hold over 80% of the market share of pharmacy claims. As a small independent pharmacy if I were to lose one of these contracts it would put me out of business within months. I know we have RCW 48.200.280(6)(d) which states PBMs can not retaliate against pharmacies, but in all honesty, I am a small business struggling to stay viable and I could not afford the lawyer fees to bring a case against a PBM if they were to retaliate against me.

The current rule, WAC 284-180-505, implemented by the OIC, says that a pharmacy must first complete a 1st tier appeal with the PBM and get an unsatisfactory response before the pharmacy can move the

appeal on to the 2nd tier, within the OIC. The PBMs are using this rule to circumvent our laws and prevent pharmacists from being able to even get their cases heard by the OIC. A couple examples of this;

1. Nearly all PBMs have statements on their 1st tier appeal process that says for Washington State Pharmacies claims older than 30 days cannot be appealed. This is not a requirement of our state law and I have argued this in a case within the OIC appeals process and the OIC Judge agreed with me, but the PBMs are still trying to enforce it in the 1st tier appeals process.
2. PBMs require that to submit a 1st tier appeal, the pharmacy must include a copy of their invoice. This is not a requirement of our state law and would be a stark violation of antitrust provisions were it required. PBMs are the ones making our “take it or leave it” contracts and they also are under the same ownership of parent companies that own retail and mail order pharmacies that are our direct industry competition. Pharmacy’s invoice costs are proprietary trade secrets and pricing information in this industry is confidential and proprietary due to the competitive nature of the business, pharmacies and wholesalers must enter into non-disclosure agreements to not share pharmacy specific pricing information with PBMs for a number of reasons, including antitrust concerns.

Furthermore, every PBM has a different portal or form that they want the pharmacy to use to submit 1st tier appeals. This non standardized process just adds to the already burdensome process for the pharmacist. They purposely make this process convoluted, time consuming, and difficult, to dissuade busy pharmacists from even attempting to submit 1st tier appeals.

My first suggestion would be to completely strike WAC 284-180-505 from the rule and allow pharmacists to appeal directly to the OIC where the PBMs are subject to civil penalties for violating our laws. Or if the current rule stays in place, the OIC should require all PBMs registered in the state to use the same, OIC designed, standardized 1st tier appeal form. The OIC can use the current law to guide what fields must be present on this form, only requiring the necessary information from the pharmacies in an easily downloadable format. Through this simple standardized process, the OIC could basically force the PBMs to follow the law and either approve the appeal or provide proof that the medication was purchased by other Washington State Pharmacies at the price they are reimbursing. This would eliminate all the burdensome bickering back and forth between pharmacies and PBM’s.

The burden of the law that the pharmacy must satisfy is the pharmacy must *demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from a supplier doing business in Washington at the pharmacy benefit manager's list price*. With the standardized form the OIC can dictate how a pharmacy must meet this requirement. Requiring an invoice is not a viable option for the reasons I detailed above. My suggestion here would be to have the pharmacy affirm that they have some sort of process in place that ensures they are doing a reasonable market analysis and procuring medication based on this information. We must remember that my small pharmacy does not enjoy the same purchasing concessions that say CVS pharmacy does with its hundreds of retail and mail order

pharmacies. The following is for your information on how my pharmacy would be able to satisfy this requirement.

- Due to the fact that my invoice costs are proprietary trade secret, confidential, and subject to non-disclosure agreements I cannot present them here in the 1st tier appeal. So, to satisfy this requirement, in the following I outline that I have done my due diligence to procure the medications at the best rates available to my small pharmacy. My pharmacy holds an account with AmerisourceBergen one of the three primary medication wholesalers in the country, this ensures a reliable supply of all the available medications patients may need. To obtain the best prices from a primary wholesaler a pharmacy must only hold a contract with one primary, because the wholesaler requires certain volume purchases to obtain the best pricing. If we tried to spread our bulk purchases over all three of the primary wholesalers, we would not meet criteria and prices would be higher. Let me point out that our invoice price is the price we pay already taking this into account, meaning the wholesaler does not give an additional NDC specific discount after invoice. It is industry standard that pharmacies must only do business with one of the primary wholesalers. Secondary Wholesalers do bring cheaper prices to the market at times, but they are not a reliable source that always has access to certain medication. Furthermore, the secondary market is a place with higher risk of bringing counterfeit medications into the supply. A pharmacy must be cognizant of this and ensure they are doing business with quality accredited suppliers. My pharmacy holds accounts with multiple accredited secondary wholesalers throughout our country, we have done extensive market analysis to narrow down our secondary wholesalers to about 10 trustworthy secondaries who consistently offer competitive prices to the market. My pharmacy software system automatically interfaces with all our wholesalers, making their medication price files electronically available to me in real time. My pharmacy software uses set electronic smart parameters to take all things into account such as minimum order requirement and shipping cost to selectively order medications from the wholesaler that can provide it to me at the least cost at the time of order. Therefore, by default, every day when we place our medication order, an algorithm that identifies the best market pricing throughout our country is leveraged to ensure my pharmacy gets the best price available to a pharmacy of my size and scope.

I have been navigating the OIC's current appeal process since 2017 when it was instated. I have won hundreds of appeals proving the PBMs were violating our laws, and it wasn't until 2021 the OIC issued the \$1000 civil penalty to one of the PBMs. Since, 2021 I have won hundreds more appeals and the OIC has never issued the harsher \$5000 civil penalty even when the PBM was found to violate the same law repeatedly.

RCW 48.200.290 (2) Any person, corporation, third-party administrator of prescription drug benefits, pharmacy benefit manager, or business entity which violates any provision of this chapter shall be subject to a civil penalty in the amount of one thousand dollars for each act in violation of this chapter or, if the violation was knowing and willful, a civil penalty of five thousand dollars for each violation of this chapter.

During this rule-making session please outline what constitutes a knowing and willfull violation.

Thank you for your time and consideration,

Clinton Knight PharmD.

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