



April 29, 2019

**Proponent Testimony on “The Prescription Drug Co-Pay Integrity Act of 2019”**

**House Bill 63**

**Before the Ohio House Health Committee**

**John Covello, Director of Government Relations**

Chairman Merrin, Vice Chair Manning, Ranking Member Boyd, and members of the Ohio House Health Committee, thank you for the opportunity to provide written testimony in **support of House Bill 63**, “Prescription Drug Co-Pay Integrity Act of 2019”.

The Independent Pharmacy Cooperative (IPC) is a national trade group representing the interest of nearly 7,000 independent pharmacy store owners in all 50 states and the District of Columbia, including over 100 stores in Ohio. Many of our member pharmacies reside in rural, underserved and economically disadvantaged parts of the country. These pharmacies continue to accept the responsibility of being the first point and often only source for delivering health care in their local communities.

IPC, as a part of the Ohio Prescription Partnership Coalition, is pleased to support HB 63. We applaud Health Committee members Reps. Lipps and West along with their 14 other co-sponsors, including Committee members Reps. LaTourette and Upchurch, for understanding the need for this legislation to protect pharmacy patients from paying higher prescription drug prices because of the predatory practices of multi-billion dollar corporate conglomerates that managed prescription claims, Pharmacy Benefits Managers or PBM’s. The other important patient protection that is vital in HB 63, ending PBM pharmacy network contract “gag orders” that contractually prevent pharmacies from discussing with their patients the cost of their prescriptions in order to provide their patients with the information and understanding of the pharmacy’s ability to provide these patients with the lowest possible cost prescriptions.

IPC thanks the Ohio House Health Committee for taking up this important, pro-patient, pro-pharmacy and pro-health benefits legislation that begins to unveil the PBM’s deceptive practices that cost Ohio pharmacy patients, plan sponsors and pharmacies millions of dollars flowing from these entities into overinflated profits for these huge, multi-billion dollar non-Ohio based PBM corporations.

While these protections seem to be common sense, the fact is there is no contract means to prevent them. And I must highly commend the action taken last year by the Ohio Department of Insurance (ODI) in determining that PBM's use of "clawback" co-pays that often charge patients more in a coverage –based fee than the cost to acquire the prescription outright from a pharmacy for cash are deceptive and prohibiting PBM's from any further use of clawbacks. ODI also took a further patient protection step to void the "gag order provisions" in contracts that prevent pharmacies from discussing any of these economic factors in filling a prescription with a patient and allow the discussion of better cost alternative to the prescription coverage with a patient. IPC fully recognizes that ODI has been a leader among its regulatory peers in using its powers to curtail PBM abuses.

And while the Congress enacted and President Trump signed into law a federal pharmacists "anti-gag order" clause prohibition, "The Patient Right to Know Drug Prices Act", the need for specific state legislation is still warranted to ensure that this patient-pharmacy relation right is applied to all state level prescription benefit programs. Another reason HB 63 is needed to protect Ohio pharmacy patients is the fact that there still is no federal law or statutory protections in Ohio to reduce patient drug costs by banning the PBM contractual practice of imposing "clawbacks" fees on pharmacy patients' prescriptions.

As a national trade group advocating for pharmacy interests in several states, IPC can attest that this PBM restrictive practices is not unique to Ohio. In fact, according to the National Conference of State Legislatures, over the past 3 years twenty states have enacted into state prescription anti-"clawback" and/or pharmacy anti-"gag order" laws to outlaw these PBM contractual requirements. Montana just enacted PBM legislation banning this practice and an anti-clawback & anti-gag order bill passed this spring in the Maryland Legislature is awaiting gubernatorial consideration. 14 other states in addition to Ohio are considering anti "clawback/gag order" bills.

While opponents of HB 63 may try to imply that these practices do not exist, or their impact is rare, there is evidence to the contrary. In addition to much Ohio press reports documenting patients who were unaware that they were paying more in co-pays, co-insurance and deductibles for certain prescription than if they paid directly for the prescription, there now is empirical data to define the scope of this profitable maneuver by PBM's. The USC Schaffer Center for Health Policy and Economics released a study in 2018 "Overpaying For Prescription Drugs: The Copay Clawback Phenomenon", which is accompanying my testimony, reviewing pharmacy claims data to determine in 2013 alone:

- 23 % of pharmacy prescriptions had patient co-pays that exceed the reimbursement payment to the pharmacy by more than \$2.
- The average "clawback" was \$7.69
- These "clawbacks" predominantly happen with "cheaper" generic drugs

- Brand drug “clawbacks” average \$13.46
- The scope of these PBM clawbacks – which are pure PBM profit at the expense of everyone else – was \$135 million in this survey affecting 200 million commercially insured Americans.

The scope of this PBM deception at the expense of pharmacies, their patients and prescription coverage plan sponsors is real and only profits the PBM’s. IPC applauds Ohio’s regulatory steps to put an end to these PBM practices that add to prescription costs and interfere with the pharmacy’s ability to communicate fully with their patients about all aspects of their prescriptions, but legislation is the only permanent patient protection the Ohio Legislature can take to ensure patients not only have a “right to know” about the real costs of prescriptions, but to allow pharmacies the legal right to best counsel their patients.

On behalf of IPC’s Ohio pharmacies, I urge this committee to PASS HB 63. Our member patients – your constituents - need this important patient consumer protection bill.

I appreciate your consideration of IPC’s testimony and stand ready to work with the Legislature to enact HB 63.

Thank you.