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TESTIMONY BEFORE THE
FINANCE HEALTH & HUMAN SERVICES SUBCOMMITTEE
IN OPPOSITION TO CHANGES TO ORC 5164.752 & 5164.753
CONTAINED IN HOUSE BILL 49

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Good morning Chairman Romanchuk, Ranking Member Sykes and members of the Finance Health & Human Services Subcommittee. On behalf of the members of the Chain Drug Committee of the Ohio Council of Retail Merchants, I am here to offer testimony in opposition to proposed changes to ORC 5164.752 & 5164.753 contained in House Bill 49, permitting tiered pharmacy dispensing fee payments in the Medicaid program. Thank you for this opportunity.

Pharmacy reimbursements have two components—the drug cost payment and the professional dispensing fee payment for services provided in the pharmacy. Ohio Medicaid has historically grossly underpaid pharmacies for the cost of dispensing a prescription. As required by law, every two years they conduct a pharmacy cost of dispensing survey of licensed Ohio pharmacies and come up with an average cost to dispense a Medicaid prescription. Despite the survey findings, there was never a resulting increase in the dispensing fee. Until 2009, the professional dispensing fee was $3.70 per prescription, even though Medicaid's 2008 cost of dispensing survey indicated the average cost to dispense was $7.77. Late in the 2009 budget process, Governor Strickland proposed reducing the fee to $1.80 and the legislature approved it. That fee is still in place today--second lowest in the country--even though subsequent biennial surveys showed the average cost to dispense continually increasing.

The Affordable Care Act included language requiring that pharmacies participating in state Medicaid programs be reimbursed for prescription drugs based on actual acquisition costs plus an adequate professional dispensing fee. The deadline for implementation of the new reimbursement model is April 1, 2017, although states have until June 30 to submit a State Plan Amendment to CMS and begin making payments at the new rates, retroactive back to April 1. CMS has been approving State Plan Amendments proposing dispensing fees in the $10-13 range. This is intended to offset the drastic cuts in product cost reimbursement.

Late in November 2016, Ohio Medicaid released their 2016 cost of dispensing fee survey conducted by Mercer. Mercer's findings indicated the average cost to dispense a Medicaid prescription in Ohio was $10.49, which we applaud. What is very troubling is that they did not recommend paying this rate across the board to all pharmacies participating in Medicaid.

Based on the Mercer recommendations, Medicaid is proposing the following fee structure:

1. for pharmacies reporting fewer than fifty thousand prescriptions, the dispensing fee would be $13.64;
2. for pharmacies reporting between fifty thousand and seventy-four thousand nine hundred ninety-nine prescriptions, the dispensing fee would be $10.80;
3. for pharmacies reporting between seventy-five thousand prescriptions and ninety-nine thousand nine hundred ninety-nine prescriptions, the dispensing fee would be $9.51; or
4. for pharmacies reporting one hundred thousand or more prescriptions, the dispensing fee would be $8.30. The $8.30 fee would be the lowest in the country and would likely apply to all of our members. We question whether CMS will view an $8.30 dispensing fee as "adequate."

This faulty tiered model is troubling for a variety of reasons, one of them being that the results of the Mercer study are skewed due to poor participation by independent pharmacies. Usable responses from chain pharmacies totaled 1,281 while usable responses from independents totaled 189. According to the calculations of the National Association of Chain Drug Stores (NACDS), more than half of Ohio pharmacies would fall under the lowest two tiers—1,187 out of a universe of 2,033. While the proposed rule would increase the professional dispensing fee paid to pharmacy providers by approximately $44 million per year, it also includes a reduction in ingredient cost reimbursement of approximately $56.7 million per year, resulting in a reduction in payments to pharmacies of approximately $12.7 million per year.

We argued unsuccessfully before JCARR that current statute only authorizes a single dispensing fee. There is language in House Bill 49 changing "fee" to "fees" and specifically authorizing tiered dispensing. The problem with that is while Medicaid's rule must be effective April 1, 2017, the budget language will not be effective until July 1, 2017. Ohio Medicaid contends that they already have the statutory authority to implement tiered fees, however, if that is the case, a statutory change such as has been proposed in House Bill 49 should not be necessary.

We are promoting an alternative proposal that is more fair to our members and provides us with more influence when setting dispensing fee rates, something we have never had through the administrative rule review process. We are requesting that the dispensing fee be set in statute at $10.49, the average cost to dispense as determined by Mercer, to be reviewed biennially during the budget process. We fully support this proposal as administration after administration have whittled away at the pharmacy dispensing fee to the point that it is almost non-existent at $1.80 for fee-for-service patients. Despite the findings of their own biennial cost of dispensing surveys required by statute, Ohio Medicaid has always ignored the results of those surveys and set arbitrary dispensing fees based on budgetary concerns as opposed to an adequate payment. According to calculations by NACDS, reimbursing all pharmacies at $10.49 per prescription would be less than $1.5 million in additional costs to the Medicaid program over what they have proposed. They would still be saving more than $11 million per year over current pharmacy expenditures.

Chairman Romanchuk, Ranking Member Sykes and members of the Committee, thank you again for allowing me to share with you the reasoning behind the Council's strong opposition to the proposed changes to ORC 5164.752 & 5164.753 contained in House Bill 49. At this time, I would be happy to answer any questions you may have.