

Statement



Statement of Opposition to Oregon HB 4122 February 3, 2102

Position: PhRMA opposes Oregon HB 4122 as currently written because it requires pharmacy benefit managers to disclose proprietary contracts and financial agreements with prescription drug manufacturers, which may be shown to pharmacists, insurers and other PBMs in the state. As a result, the legislation may result in higher healthcare costs for patients and businesses in Oregon.

HB 4122 calls for assignment of fiduciary responsibility to pharmacy benefit managers (PBMs) and would require disclosure of all contracts and agreements between a PBM and prescription drug manufacturers. While the bill contains some language that permits these agreements to be designated as confidential or a trade secret, it clearly would permit the OR Board of Pharmacy to disclose this information to pharmacies, pharmacists, other PBMs and insurers as the Board decides is warranted. The bill compromises the business agreements between drug manufacturers and PBMs under the premise of patient protection.

A trade secret is “any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.” *Restatement (Third) of Unfair Competition § 39 (1995)*. The definition includes compilations of data, pricing, marketing techniques, and the identity of customers. Negotiating strategies vary by both PBM and pharmaceutical manufacturer, and are the product of focused research and ongoing relationships between healthcare providers. PBMs and manufacturers engage in strategic negotiations to ensure that each individual client has the most appropriate contract. Disclosure of the terms for one client might compromise competition in drug negotiations with other clients. Such financial strategies are closely guarded by each PBM and manufacturer and are not commonly known.

During the 2010 passage of federal health reform legislation, proponents of this type of PBM legislation tried to do nationally exactly what this legislation would do in Oregon. However, federal lawmakers understood that there are great unforeseen consequences and, taking the advice of the Federal Trade Commission (FTC), limited disclosures only to an aggregate, non-specific form. In Oregon’s proposed legislation, the decision to make disclosures of such sensitive information lies with the Board of Pharmacy and PBMs and manufacturers are left without protections from such disclosures.

The legislation could negatively impact the penetration of PBMs in Oregon. A decrease in competition can lead to higher prices for all purchasers of health insurance, PBM, and pharmacy services, including Oregon retirees, state employees, businesses and self-insuring union health funds. Maine enacted similar legislation several years ago and the number of PBMs operating in the state has declined. When analyzing a recent New York bill that would require the same types of disclosures, the FTC concluded that “imposing unneeded and unwanted disclosures will increase health care costs, and such costs may be reflected in the price of drug plans that health plans are able to offer New York health care consumers.” (*FTC Office of Policy Planning, Letter to New York Legislature, Mar. 31, 2009, at 4-5.*) Why? Because when members of any industry “know the precise details of rebate arrangements offered by their competitors, then tacit collusion among them may be more feasible.” Both the Congressional Budget Office and the Office of Management and Budget have raised the same concerns about decreased competition and increased prices.

PhRMA urges Oregon legislators to oppose HB 4122.