



HB 4109
2/10/2012
House Committee on Health Care
Co-Chair Rep. Mitch Greenlick
Co-Chair Rep. Jim Thompson

Testimony of Rep. Jim Weidner

I would like to take a moment to assuage any concerns and clarify some legislative intent and definitions.

This is a simple bill. This is not a complex or extremely convoluted issue and this bill can and should be passed this session. In these tough economic times when . This bill requires the state to establish a system of competitive bidding for the lowest price of generic drugs for Medicaid and state assistance programs. I want to distinguish between name brand and generic drugs. We are not talking about the innovator name brand drugs which have different active ingredients. We are talking about generic drugs which have the exact same active ingredients as their competition. When it comes to generic drugs, why shouldn't the state attempt to get the best price possible knowing that quality will not be compromised only their relative cost to the state? Again I must clarify that we are only talking about generic drugs and the only difference between them and their competitors is their price.

Having established that this bill only deals with the generic drugs which on average constitute 80% of the total Medicaid drugs dispensed. I would like to address the concerns raised against this bill and explain how this bill which creates a state program for competitive bidding process for generic drugs could indeed drive down the cost of generic prescription drugs for the state and citizens of Oregon.

Concerns & Responses

Concern 1) *Pharmacies already negotiate the lowest price for generic drugs with the manufacturer.*

Response 1) Not sure if this is a quantifiable fact that pharmacies already acquire generic drugs at the “lowest” price. It would be beneficial to disclose how pharmacies can “prove” that their method already acquires the generic drugs at the lowest cost possible. With the state of Oregon spending \$90 Million a biennium on the purchase of generic drugs, we believe this purchasing power through collective bargaining on the behalf of the state’s Medicaid program could drive down the cost through a bidding process much like the proven results of Wal-Mart’s bidding process which due to their size acquired generics at \$4 when other pharmacies already thought they had the lowest price. This displays that the size of the purchasing power incentivizes the manufacturer to push their manufacturing production to finds means of streamlining their process to compete for the sale.

Concern 2) *Maximum Allowable Cost or MAC is a pricing list which sets a cost that reflects the market costs by setting maximum cost standards after negotiations.*

Response 2) the MAC is a set price list cost ceiling, not the floor. To save valuable state resources while providing quality medical assistance for Oregonians using state funded programs, we are not just concerned about the “maximum” purchase price but rather the “minimum” purchase price. The maximum allowable cost is the maximum cost that will be paid. If a lower price is negotiated, the MAC is still paid by the State of Oregon. The difference between the negotiated price and the MAC could be substantial and the State of Oregon should be recouping those dollars.

Furthermore, a bidding process drives down costs and creates a competitive environment where fear of losing a major client who spends around \$90 Million a biennium, like the state of Oregon, causes manufactures to reassess their stated production costs to conform to the demands of the large collective purchaser.

Concern 3) *It is very unlikely that any saving realized from the proposed bidding process would be less than the cost to administer the program.*

Response 3) Our office inquired into the potential savings that could occur should a competitive bidding process for generics be instituted. Tom Burns of the Oregon Health Authority wrote that

"As to savings, there will be savings, if we assume the same 3% across the board we get on brand products". Tom Burns went on to say that the savings estimate of the bidding process that would yield a 3% savings equates to \$1.3 Million dollars. Surely, this program won't cost the State of Oregon \$1.3 Million per year to administer. This is after all just a competitive bidding program, something that many governments implement on a regular basis.

Concern 4) *The pharmacist would have to carry duplicate inventory of generic drugs for customers who use the state's assistance programs and require the state's preferred generic drug.*

Response 4) Pharmacists are already carrying duplicate stock for most of the products they sell. Why shouldn't the state ensure that it pays the lowest price possible?

Just an example, grocery stores carry 9 brands of cheese and 6 brands of baby formula for the WIC program and they haven't recorded complaints about higher operating cost due to shelving and organizing.

Concern 5) *Pharmacists would be faced with the dilemma of incurring a penalty and selling the prescription at a loss or having the patient wait until they could obtain the state preferred drug.*

Response 5) Section 1 subsection (3) of the bill clearly states that "pharmacies are not prohibited from substituting another generic drug for a prescribed generic if a pharmacist normally carries the prescribed generic drug but is temporarily out of stock".

The concern about a generic refill other than the state's preferred generic which may cost more than what the patient has to pay under the Medicaid program or state assistance, can be worked out within the rulemaking process of the program so that pharmacists will not incur the burden of the cost differential and lose money through the non-preferred generic prescription refill.

Concern 6) *There is no guarantee that that the lowest bid would be the best price...*

Response 6) Page 1 lines 22-23 define the competitive bidding process as "generic manufacturers to enter into the proposed contract to sell products at the lowest price". These companies would enter into this process with the understanding that they are prepared to offer the most competitive bid to acquire the \$90 Million biannual account of the State of Oregon.

We know that competition reduces price. For instance, Similac baby formula is the WIC approved formula based on contract negotiation. But that doesn't mean that stores don't carry Nestle, Enfamil, or Carnation. Generic drug companies should bid for this market share. Baby formulas negotiate for their business and there is no reason Medicaid shouldn't do the same.

Concern 7) *Would pharmacists be expected to buy special stock of the preferred state generic drugs and keep that separate from the stock of generics set aside for non-Medicaid or state assistance recipients?*

Response 7) Pharmacists would operate just as they do currently with the Preferred Drug List for name brand prescriptions. As noted above, this process is done by several industries that operate alongside government programs like grocery stores and the WIC program.


Concern 8) *What would happen if the winning generic manufacturer was unable to meet the demand of all the pharmacies?*

Response 8) Section 1 subsection 3 addresses this concern. The generic manufacturers who partake in this program understand the volume required. Oregon is highly unlikely to be the cause of a generic drug shortage, and will not break the system. Also, the recent bird flu scare didn't prevent the maker of Tamiflu from meeting the demand which prompted a quick increase in production to meet the nationwide demand.

Concern 9) *Couldn't significant savings be achieved through encouraging a higher rate of generic dispensing?*

Response 9) This argument is not about innovator brand name drugs with different active ingredients. This bill is about generic drugs, drugs that all have the same active ingredients as their competition. Why shouldn't the state attempt to obtain the best price possible? Furthermore, a national average holds that around 80% of all dispensed drugs within the Medicaid system are generic drugs.

Thank you for your time and consideration,

A handwritten signature in black ink, appearing to read 'Jim Weidner', is written over a horizontal line.

Rep. Jim Weidner, HD#24