

MAY 2013 OREGON HOUSE BILL 2123 NEGOTIATION & AMENDMENT SUMMARY

Activity since Last Committee Hearing:

- Pharmacy met with the PBM industry three (3) times to reach a compromise on H.B. 2123.
- Currently pharmacy understands that all interest groups consider H.B. 2123 to be a “compromise” bill.
- The current language does not represent an ideal situation for the parties on either side.
- Pharmacy has conceded many important items in an attempt to bring the PBM industry to a neutral position.
- ***Pharmacy would like to thank all of those who attended and worked towards an agreement on these issues and hopes all involved will now offer their support for the proposed amendment.***

H.B. 2123 Addresses Three Issues:

- PBM licensure – Under the Oregon Insurance Division
- Fair and uniform pharmacy auditing standards
- Maximum Allowable Cost (MAC) transparency

PBM Licensure:

- PBMs have access to sensitive patient data, own their own mail-order pharmacies, dispense medications, determine prescription drug formularies and control the prescription drug benefit for millions of patient lives. Therefore it is appropriate that such entities be registered in some way with the state.
- Originally, H.B. 2123 licensed PBMs under the Oregon State Board of Pharmacy which the PBMs did not support.
- As a concession, pharmacy moved the licensure authority to the Oregon Insurance Division.
- **The provisions of this section require only that a PBM submit a short application and pay a reasonable fee.**

Fair and Uniform Pharmacy Audits:

- Designed to prevent the unfair targeting of minor clerical or administrative errors where no real fraud, patient harm, or financial loss has occurred.
- Limits time frame for the auditing of claims and provides pharmacy with an avenue for appealing audits.
- H.B.2123 does NOT prevent audits or recoupments from occurring where true fraud, waste and abuse exists.

Several Compromises Reached Within Audit Language:

- Negotiated to define notification requirements between “on-site” and computerized or “desk” audits.
- Negotiated to specify that where true fraud is “evidenced” *recoupment may occur*.
- Agreed to language allowing PBMS to withhold future payments for recoupment claims in excess of \$40,000.
- Negotiated the number of claims that may be audited *and removed the cap on desk audits*.
- Negotiated language that allows pharmacies to validate claims where audits may attempt to recoup money.

Maximum Allowable Cost “MAC” Transparency:

- This section was discussed the most.
- This section is designed to provide reasonable transparency and standards between contracted parties regarding generic pharmaceutical price determination and pharmacy reimbursement. Provides a standard appeals process for pharmacies that have been reimbursed below cost.

Several Compromises Reached Within MAC Transparency Language:

- Negotiated the standards of a defined appeals process and the minimum requirements for appeal determination.
- Negotiated language that defines what figure a MAC appeal would be determined from. (i.e “amount” to “net amount”)
- Negotiated language requiring PBMs to disclose to pharmacies the rationale of determining their MAC pricing.
- Negotiated language providing pharmacy the right to obtain a MAC lists in a reasonable and useable manner.

Most notable compromise:

- Until December 31, 2014 when an appeal is approved, the financial adjustment will be based from the date of the appeal determination for affected network pharmacies. Beginning in 2015 this provision will make such adjustment retroactive to the date that the pharmacy *adjudicated the claim* and any correction will be made by the PBM to the reporting pharmacy only.