



SUPPORT HB 2123 - STAND UP FOR SMALL BUSINESS IN OREGON

March 15, 2013

TO: HOUSE COMMITTEE ON HEALTH CARE

FROM: OREGON STATE PHARMACISTS ASSOCIATION AND
OREGON SOCIETY OF HEALTH-SYSTEM PHARMACISTS

***In a world where the delivery of cost-effective patient care is king,
Oregon's local, community-based pharmacists are getting the
squeeze.***

The Oregon State Pharmacy Association and the Oregon Society of Health-System Pharmacists are in support of HB 2123 which helps protect Oregon patients and pharmacies from the predatory and monopolistic business practices of national conglomerate Pharmacy Benefit Managers (PBMs) who are attempting to manipulate prescription drug use and payment for their own profit. The pharmacist small business owners of community pharmacies cannot survive to serve the people and physicians of Oregon if these **unregulated**, large national conglomerates continue to exercise their monopoly in the prescription drug market to drive out competitors.

Facts:

- Over 90% of a community pharmacy's income comes from prescription drug sales.
- Over 90% of prescriptions are paid for by PBMs (on behalf of government or private insurers)
- Over 60% of prescriptions are handled by three national conglomerates, for-profit PBM's that also own their own mail order pharmacies. They can mandate that patients use their own pharmacies.

- These PBMs are the most profitable segment of healthcare, and have seen 1,000% increases in share price over the last 10 years. (These PBMs are for-profit companies traded on the NYSE)
- The contracts are “take it or leave it” non-competitive agreements that strangle community providers and enrich the national for-profit PBMs. (For example, even **Walgreens** was not big enough to refuse the abusive and unrealistic contract terms presented by Express Scripts/Medco, and had to eventually sign the contract. What chance does your neighborhood pharmacist have against this monopoly?)
- Mail order pharmacy is a legitimate and convenient choice for many patients with stable chronic conditions
- Community pharmacies utilize generics over 80% of the time.
- Community pharmacy margins are unchanged or decreasing
- PBM profits are increasing at 10 times the Dow Jones Industrial Average
- Health care costs to insurers would remain the same if PBM abuses were eliminated

Myths

- PBMs control drug costs by using generic drugs
- Community pharmacies want to eliminate mail order pharmacy
- Community pharmacies want to increase prices
- Dispensing prescription drugs is a free market, with many competing PBMs
- PBMs are regulated by the government
- Insurers understand drug pricing and how PBMs generate profit

HB 2123

HB 2123 is the product of the House PBM Work Group that was created after the 2012 Legislative session to address transparency issues raised by Representative Jules Bailey and other legislators. Rep. Bailey was joined by Representatives Jim Thompson and Margaret Doherty along with various stakeholders representing PBMs, pharmacies, payers and consumers to develop recommendations for the 2013 session. Those recommendations are reflected in the -1 amendments and several other amendments that will be presented.

Section 2:

This section would provide for the registration of the PBMs with the Board of Pharmacy to help ensure consumer protection. PBMs establish the terms and conditions under which pharmacies dispense medications to patients, operate their own mail order pharmacies where they dispense and substitute alternate treatments of medications,

handle sensitive patient information and have access to patient records. Registration with the Oregon Board of Pharmacy would allow the State a regulatory mechanism to help protect the public health by ensuring high standards in the practice of pharmacy.

Section 3:

The CMS and 23 other states have found that the audit practices of the PBMs no longer control fraud and abuse, but are used to harass and intimidate community pharmacies and extract fees and penalties for no reason. Section 3 would set some basic business practices regarding clerical errors and unintentional errors and allow for audited community pharmacies to see the results of the audit and respond accordingly.

OSPA and OSHP fully agree that Plan sponsors and PBMs have a legitimate interest in making sure pharmacies dispense drugs accurately and safely. That is why we support the Board of Pharmacy and require licensing and high professional standards. However, PBMs and the audit companies they subcontract with don't have any legitimate interest in digging around to find small clerical errors that result in no financial harm, e.g., requiring recoupment for dispensing to Hank Jones instead of Henry Jones. This bill protects pharmacies from these sorts of abuses.

Currently, audit firms can go on "fishing expeditions." This bill requires a limit on the number of claims so that auditors will go after the ones that really matter. Let's face it, audits are expensive and time consuming for both auditors and pharmacies. Let's keep them focused on the right kind of claims.

And, it's important to remember that the bill doesn't prevent auditors from tracking fraud. It is specifically exempted from limitations including: fraud, duplicate billing, and a host of other reasonable exemptions.

Section 4:

This section provides for fair and transparent contracting terms and disclosure by the PBMs to contracted pharmacies on how they will reimburse the pharmacists for the products and services they provide.

Currently there is no standard regarding the criteria for the inclusion of drugs on the "Maximum Allowable Cost" or MAC lists or for the methodology as to how the maximum price is established, changed or updated. In many cases, these lists remain confidential to both the payer and the pharmacy which leaves the pharmacy unsure about how much they will be reimbursed.

It should be noted that MAC information is public in many places and some PBMs publish their MACs. Disclosure can work and MACs will still function.

MAC pricing is a particular hurdle to community-based pharmacists keeping their doors open and their businesses viable. Any pharmacy that would like to participate in a drug-coverage network is required to accept the Maximum Allowable Cost (MAC) pricing

provision(s) put forward by the PBM. Due to their lack of oversight, this unfortunately reality means that there is no standard within this enormous industry for the methodology or criteria that any given PBM would use to place a drug or series of drugs onto the MAC List.

In other words, the pharmacist is left in the dark as to what kind of total revenue-projections they can expect when they are signing on the dotted line.

PBMs claim that they have thousands of MACs and that it is impossible from a practical standpoint to keep track of what each pharmacy should get paid for all of them. More than likely, they only have a very few, if not one, MAC that they use to pay the pharmacy. They then mark that up for what they charge the plan. Even then, they will likely have only 4-5 mark-up levels. Complexity is not a good reason for non-disclosure. And if they cannot keep track of all these MACs, how can they bill their plan sponsors accurately?

In order for PBMs to sell to their customers, they have to make educated guesses about what the discounts for generics will be during the contract term. They do that, and they place performance guarantees. That means they could also provide information on what their MAC will be to pharmacies.

PBMs are in a privileged position between the buyer and the seller. They control the information exchange, and their contracts typically prohibit the pharmacy from talking to the plan sponsor, including complaints about MAC pricing. This creates market inefficiency.

It is time to level the playing field in Oregon.

There is no way for a pharmacy to make a decision on whether they can accept these ever-changing rates because the corporation that they are supposed to view as a business partner will not - and legally does not have to - disclose their methodology or what those maximum costs are. HB 2123 will help provide this standardization of criteria for how a product might be picked for the MAC List. *This is going to be critical to keeping the doors of community-based pharmacies open, allowing rural Oregonians to access their meds.*

Pharmacies should not be expected to bet their business on a blind deal.

Summary

Oregon pharmacies need your support to help regulate these corporate monopolies that threaten the well-being of Oregonians and the livelihoods of Oregon pharmacists who serve them. The PBMs are incited to eliminate all local competing pharmacies so that the only way to obtain prescription drugs is to deal with their owned pharmacies. What began as a needed coordination and claims processing role has developed into a predatory business model. If allowed to manipulate the market, all profitability will be

eliminated from the patient care model of the community pharmacy. The only access to prescription drugs will be from outlets that have other reasons to have a non-profit activity for marketing or retail traffic-building purposes. There will be no free-standing community pharmacies to serve patients. This will be of special hazard in the many rural communities that do not have big box mass merchandisers present in their community.

The regulation and control of PBMs will decide if Oregonians will have the opportunity to have the health care services that have been provided by dedicated and professional pharmacists for hundreds of years. In a time where prescription drug abuse is one of the largest problems facing Oregonians, it is time to protect and encourage the local, individualized and patient-centered care that pharmacists have always provided.