

March 30, 2015

The Honorable Mitch Greenlick, Chair
House Committee on Health Care
900 Court Street NE
Salem, Oregon 97301

Re: House Bill 3178 – PBMs: Oppose

Dear Chairman Greenlick:

I write today on behalf of Express Scripts Holding Company to respectfully oppose House Bill 3178. Express Scripts administers prescription drug benefits on behalf of our plan sponsors – employers, health plans, unions and government health programs — for over 85 million Americans. We provide integrated pharmacy benefit management services including pharmacy claims processing, home delivery, specialty benefit management, benefit-design consultation, drug-utilization review, formulary management, medical and drug data analysis services, as well as extensive cost-management and patient-care services.

House Bill 3178 seeks to unravel an agreement reached in 2013 between the PBMs, health plans, retail and local pharmacists, secured over the course of 18 months of interim meetings and negotiations. At no time since the provisions of HB 2123 were enacted have we been contacted by the proponents of this legislation regarding any problems.

House Bill 3178 repeals the existing section of the law containing the definitions governing pharmacy audits and MAC lists. The language proposes extensive changes including inappropriately defining PBMs as a “third party administrator” if they contract with pharmacies on behalf of insurers. The State of Oregon Insurance Division already defines and licenses TPAs.

House Bill 3178 contains provisions which were specifically excluded in the final version of HB 2123, including the disclosure of the methodology used in the development of MAC lists for generic drugs. This information is highly proprietary. If this information were made public through this disclosure, the cost of generic medications would increase for everyone in the chain: consumers, plans sponsors, PSAOs, wholesalers, and pharmacies.

The proponents of this legislation also seek to interfere in contracts between PBMs and plan sponsors, dictating private contract terms and disclosures. PBM clients are sophisticated purchasers of health care, including prescription drug benefits. Plan sponsors dictate the terms and conditions of the services provided by the PBM, including the level of disclosure around costs. By dictating plan terms and conditions, the legislation hinders the ability of a plan sponsor to construct a pharmacy benefit plan that meets their needs. If our clients want the information required in HB 3178, they can include that requirement in their Request for Proposals and negotiate the terms in their contract.

Section 2 (2) (g) proposes additional changes including more frequent updates of MAC lists and requires pharmacies and plan sponsors be notified of changes to the lists. Again, these issues were discussed at length during the workgroup meetings that led to the introduction of HB 2123, as well as the subsequent months of negotiation. PBMs manage thousands of MAC lists for our clients. If our clients want this information, they ask for it in the contracting process. Pharmacies have contracts with multiple PBMs. In some cases, the price of a drug can vary daily. Pharmacy emails will be inundated with hundreds of daily updates. If a pharmacy wants to know how much they will be reimbursed for dispensing a particular drug for a specific patient, they can run a test claim.

Finally, Section 2 (2)(a) prohibits inclusion of drugs on a MAC list unless it is generally available for purchase “at a significant cost difference.” To whom? The pharmacy? The wholesaler? The PSAO through with the pharmacy purchases their inventory? What is the standard for this determination? There are numerous factors that drive changes including the FDA pulling a drug from the market, a manufacturer being forced to shut down production, one or more manufacturers halting production of a drug, leaving only one or two on the market. In short, the purpose of this language is to limit the number of generic medications subject to a MAC list. If we can’t MAC a drug, it will increase costs for plan sponsors and patients who will be forced to pay brand prices for generic medications.

For these reasons, we must oppose HB 3178.

Sincerely,



CYNTHIA M. LAUBACHER

Cc: Members, House Committee on Health Care