

April 3, 2015

The Honorable Mitch Greenlick, Chair  
House Committee On Health Care  
Oregon State Capitol  
900 Court Street, NE  
Salem, OR 97301

**Re: HB 3178 – OPPOSE**

Dear Representative Greenlick and Members of the Committee,

Moda Health is submitting testimony in opposition to House Bill 3178, a bill that modifies legislation passed in 2013 that provided unparalleled transparency into the processes used by pharmacy benefit managers (PBMs) to pay pharmacies for the generic drugs that are covered under the pharmacy benefits of Oregonians. HB 3178 is promoted as an effort to promote greater transparency in Maximum Allowable Cost (MAC) lists but, in fact, it will weaken the ability of PBMs to drive down costs for Oregon clients and consumers.

Moda Health is a Northwest-based health insurer providing dental, medical and pharmacy insurance and administrative services in Oregon, Washington and Alaska. Among the clients we serve in Oregon are organizations who participate in the State's Oregon Prescription Drug Program, which includes 160,000 members enrolled in the Oregon Educators Benefits Board, SAIF or other self-insured and government programs statewide, as well as ~290,000 under- and uninsured residents who benefit from the drug prices of the Oregon Prescription Drug Program.

HB 3178 seeks to place further requirements on PBMs to disclose their pricing strategies and methodologies, but it does so from a fundamental misunderstanding of the roll of MAC pricing and how invaluable it has been as a tool to hold down escalating drug prices. The use of MAC price lists is a common cost management tool used by PBMs that specifies the reimbursement limit for a particular strength and dosage of a generic drug that is available from multiple manufacturers but sold at different prices to pharmacies. MAC price lists were created to assist payers with establishing a common price for a drug that has a range of available prices from different manufacturers. These lists are widely used by health plans and private-sector clients and by most states for Medicaid and other programs. They are calculated based on aggregate data that shows what pharmacies pay, on average, for generic drugs.

The reason MAC lists are used is that generic drugs often have a huge range of manufacturer list prices, and the MAC prices reconcile the differences between an inflated list price and the price the pharmacy actually pays for the drug. Without the MAC list, pharmacies could negotiate to acquire the drugs at a



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substantial discount from a manufacturer's list price but be reimbursed at the manufacturer-published price. With the MAC lists, the pharmacies are always motivated to seek and purchase generic drugs at the lowest price in the marketplace. Without MAC lists, pharmacies would have no incentive to seek better sourcing for their generic drugs to lower their costs.

PBMs operate in a highly-competitive environment with other PBMs, and it is essential to ensure that pharmacies compete with each other to get the lowest prices possible from drug manufacturers. If the additional MAC information that is required in HB 3178 were publicized, it would have an anti-competitive effect on plans and insurers, as well as PBMs. Competing PBMs would have access to other PBMs' drug payment calculations, allowing price fixing and higher costs for consumers. In addition, if a pharmacy could discover a PBM's MAC pricing methodology, it would allow it to negotiate with its suppliers to maximize its profits at the expense of seeking lower prices to hold down costs for employer groups and consumers. The value of MAC is that it has helped lower prices on generic drugs available from a number of different manufacturers, which has helped those who pay for pharmacy benefits to control their costs.

Moda is opposed to HB 3178 for the following reasons:

1. Current legislation that was passed in 2013 already addresses requirements for greater transparency. In 2013, the Oregon Legislature passed HB 2123. Among the provisions of that legislation, it imposed requirements on PBMs relating to their list of drugs for which MAC reimbursement rates are established and required that PBMs establish an appeals process for when disputes arise between a network pharmacy and a PBM regarding a drug subject to MAC pricing. The statute that created this requirement became operative on January 1, 2015. Surely, no time has elapsed to identify weaknesses or identify areas requiring legislative revision to existing transparency requirements.
2. HB 3178 will increase costs for health plans, employers and consumers. HB 3178 is promoted as an effort to promote transparency in MAC lists but, in fact, it will weaken the ability of PBMs to drive down healthcare costs for clients and consumers in Oregon. As stated earlier requiring PBMs to disclose the methodologies they use to establish their MAC price lists, PBM competitors will have access to a PBM's drug payment calculations, allowing price fixing and higher costs for consumers. Likewise, pharmacies will understand the pricing strategies of PBMs and can use this knowledge in their negotiations with their suppliers to maximize their spread, resulting in higher prices for consumers.
3. HB 3178 significantly increases the requirements placed on PBMs to update and publish their MAC lists in the market which increases the costs associated with a very complex process. A common misconception is that PBMs have a set MAC list or price. This can't be further from the truth. The lists and prices of generic drugs change at any given time based on commodity market forces. PBMs have no direct visibility into the prices that pharmacies purchase their drugs for since pharmacy agreements with their suppliers keep those prices confidential. PBMs survey the market to establish the range of prices that are available to pharmacies. Because manufacturer list prices

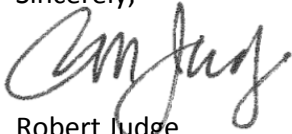
for generics change frequently, the MAC lists need to be updated frequently. How often this happens is determined by the contracts between the PBM and its client and the PBM and the pharmacy. Requiring that PBMs place or remove a drug on a MAC list when there is a “significant” cost difference is an unworkable standard required in this bill.

HB 3178 mandates a one size fits all totally open approach to the key provisions of MAC pricing without consideration of the value of this tool and its necessity to help hold down costs and ensure that pharmacies constantly seek to improve their prices with their suppliers. Expanding the already transparent requirements in existing statute by passing HB 3178 into law will hurt consumers, payers, employer groups, unions and others who pay for the cost of medications and it will give a free ride to pharmacies by removing the need to innovate and negotiate with their suppliers to hold their product prices down.

For these reasons, Moda Health is opposed to HB 3178.

We appreciate the opportunity to comment on this bill. If you have any question, please do not hesitate to contact me at [robert.judge@modahealth.com](mailto:robert.judge@modahealth.com), or (503)265-2968.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Judge". The signature is written in a cursive, flowing style.

Robert Judge  
Director of Pharmacy Services