



## **Help Enhance Patient Care, Choice and Access Support HB 4103 with Amendments**

HB 4103 addresses the serious issues of patient care, choice and access resulting from the current practice of Pharmacy Benefit Managers (PBMs) mandating that prescriptions must be filled by their mail order “pharmacies”. Owned by the PBMs, these “pharmacies” are large automated dispensing facilities that in many cases don’t deliver the patient benefits of a traditional pharmacy.

In person visits and face-to-face interactions between patients and pharmacists is quite simply the most effective way to ensure patient health and safety when it comes to medical therapies and preventing any related risks. There are many patients that require encouragement, consultation, monitoring and assistance of pharmacists to maintain their medication compliance and good health outcomes. There are many patients that prefer to have the convenience of being able to obtain their prescription drugs on short notice rather than wait 1-2 weeks for the mail order pharmacy to fill their medication. Additionally, about 40% of prescriptions are needed on an urgent or immediate basis such as pain medications and antibiotics.

When given a choice, 83% of customers prefer to fill prescriptions at a community pharmacy rather than at a so-called mail order pharmacy. Clearly mail order is not for everyone which is why PBMs support “mandates,” complex cost-shifting schemes to promote the use of PBM-owned dispensing facilities and even disincentives that penalize patients for using community pharmacies. As it is now, no Oregonian can fire their mail order pharmacy for poor service, lost prescriptions or the wrong drugs being sent...they are held captive.

Despite the lack of evidence of cost savings for the pharmacy benefit plan sponsors or payors, the perception of lower prices via mail order versus community pharmacy has contributed to the growth of mail order. However, the Journal of Managed Care Pharmacy has published several studies that have demonstrated that mail order can result in higher net costs in a pharmacy benefit plan due to: lower generic dispensing rates in mail order than in the community pharmacy; greater waste from mail order overstocking; and, savings resulting from increased drug adherence by patients via community pharmacy. In addition, patients are left confused and overwhelmed with wasted drugs – in many cases grappling with the dispensing of controlled substances which poses a massive public risk.

HB 4103 also will prevent PBMs from requiring a pharmacist or pharmacy from meeting accreditation, certification or credentialing standards in addition to those required by the State Board of Pharmacy or other state or federal laws. This practice has been used by PBMs to drive the dispensing of higher priced drugs to their “specialty” pharmacies rather than allowing patients the choice to have their prescriptions filled by their local pharmacy.

However, in addition to providing choice and patient choice, we need to assure Oregonians that they have access to community and retail pharmacies. That's why the -1 amendments are so important because they would finally give the state the enforcement tools to ensure that PBMs comply with the MAC pricing and audit regulations approved by the Oregon Legislature in 2013 when it passed HB 2123.

A "Maximum allowable cost" or "MAC" list refers to a payer or PBM-generated list of products that includes the upper limit or maximum amount that a plan will pay for generic drugs and brand name drugs that have generic versions available ("multi-source brands"). Essentially, no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists. Retail pharmacies are not informed how products are added or removed from a MAC list or the methodology that determines how reimbursement is ultimately calculated. However, pharmacies must contract with PBMs to provide services and participate in plans without having this critical information. In other words, pharmacies are required to sign contracts not knowing how they will be paid.

HB 2123 established requirements providing clarity to pharmacies with regard to how MAC pricing is determined and updated and created an appeals process in which a dispensing provider can contest a listed MAC price.

The measure also addressed the audit practices of the PBMs that were found by CMS and numerous other states to no longer serve as a mechanism to control fraud and abuse, but were being used to harass and intimidate community pharmacies and extract fees and penalties for no reason. HB 2123 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.

Unfortunately, HB 2123 has never been fully implemented. After several legislative efforts to provide the Department of Consumer and Business Services the enforcement powers, the Legislature approved HB 2338 in 2017. It provided DCBS with oversight and enforcement tools to help ensure compliance. Sadly, critical provisions in the rule drafted by DCBS to go into effect January 1, 2018, were not adopted. The provisions included critical definitions for implementation of HB 2123 and the process for appealing a MAC pricing reimbursement. Needless to say, these provisions were strongly opposed by the PBMs. While the DCBS hearing officer reported that these provisions were clearly within the Agency's statutory authority and consistent with the legislative intent, they were not adopted.

Unregulated MAC pricing and auditing practices are a particular hurdle to community-based pharmacists keeping their doors open and their businesses viable. Unenforced regulations are equally as impactful. Delivery of cost-effective and convenient patient care is critical. Please support the -1 amendments which strengthen Oregon's PBM registration law and ensures a fair and transparent medication delivery marketplace.

OSPA and OSHP ask for your support of HB 4301 with the adoption of the -1 amendments which will enhance patient care, choice and access.