

## HB 2185 -2 STAFF MEASURE SUMMARY

### House Committee On Health Care

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**Meeting Dates:** 3/21, 4/9

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#### WHAT THE MEASURE DOES:

Prohibits a registered pharmacy benefit manager (PBM) from requiring an insured person to fill or refill prescriptions at a mail order pharmacy including a specialty pharmacy. Requires a PBM to allow a network pharmacy to mail, ship, or deliver prescriptions drugs to patients. Prohibits PBMs from requiring a patient signature if the network pharmacy maintains a shipping log or notification of delivery by a package delivery service. Defines enrollee, mail order pharmacy, specialty drug, specialty pharmacy, generally available for purchase, similarly situated pharmacies. Requires PBMs to disclose to a network pharmacy industry sources used to determine the maximum allowable cost set by PBM. Requires PBMs to make pricing information electronically available in an accessible and searchable format; describes specific data elements required to be available electronically to a network pharmacy. Modifies reimbursement process used by PBMs and network pharmacies.

#### ISSUES DISCUSSED:

- PBM contracts that prohibit retail pharmacies from offering mail order prescriptions
- Mandating mail order by PBMs, including specialty drugs for enrollees
- Costs associated with mail order compared to brick and mortar retail pharmacies
- History of proposed and enacted PBM legislation in Oregon
- Independent and community pharmacies, financial viability, low reimbursement rates, and access to pharmacies by area residents
- Proprietary contracts between PBMs and pharmacies; nondisclosure of contractual terms including reimbursement rates
- Fraudulent prescriptions, reimbursement from PBMs to pharmacies, incorrect payment recoupment, and PBM adjudication fees (Direct and indirect remuneration or DIR fees)
- Definition of specialty drugs
- Similar legislation in other states, specifically Georgia and Louisiana

#### EFFECT OF AMENDMENT:

-2 Replaces measure. Specifies that registered PBMs may not prohibit a network pharmacy from offering delivery of prescription drugs by mail, common carrier, or by hand delivery by an employee or contractor of the pharmacy. Allows a PBM to impose on the pharmacy limits on the delivery of prescription drugs by mail or common carrier under the terms of the contract. Prohibits a pharmacy from submitting a claim for reimbursement to a PBM unless it is agreed to by the PBM. Requires a pharmacy to disclose to a customer any delivery fees; delivery fees will not be reimbursed by the PBM, if applicable. Prohibits registered PBMs from directly or indirectly restricting or penalizing a network pharmacy from informing a customer of the difference between their out-of-pocket cost to purchase a prescription drug and the pharmacy's retail price for the drug.

**REVENUE:** *No revenue impact.*

**FISCAL:** *May have fiscal impact, but no statement yet issued.*

#### BACKGROUND:

Pharmacy entities dispense pharmaceutical products directly to consumers. Pharmaceutical products are ordered by the pharmacy and delivered by a wholesale distributor or purchased directly from a manufacturer. Licensed pharmacists dispense products to consumers according to prescriptions received by written note or electronic

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transmission. Pharmacies can be generally separated into three pharmacy types:

- Retail – local entities that are open to the public. These can be national corporate chain pharmacies, independently owned individual stores, or regional chains. Currently there are 1,377 retail pharmacies licensed in Oregon.
- Specialty – organizations that are not open to the general public but contract with payers or manufacturers for the delivery of specialty drugs which can require special storage and handling. These entities can be owned by a pharmacy benefit manager (PBM), retail pharmacy, or be independently owned. Specialty pharmacies may deliver medications directly to a retail pharmacy location for patients to access.
- Mail-order – organizations that deliver pharmaceutical products through the mail. These pharmacies can be owned by a wholesale distributor, chain drug store, PBM, insurance company, or be independently owned.

Pharmacy benefit managers (PBMs) are intermediaries between health insurers, pharmacies, wholesalers, and manufacturers. Most health insurers contract with PBMs to provide third-party administrative services for insurer's pharmacy benefit, with the goal of cost containment. PBM services can include claims processing, formulary and benefit design (tiers, utilization management, cost-sharing), pharmacy network contracting, and rebate negotiation with manufacturers. Additional services PBMs provide include administration of mail-order or specialty pharmacy services. Insurers can choose if and what services they contract with PBMs to perform on their behalf. In Oregon, 55 PBMs are currently registered with the Department of Consumer and Business Services.

House Bill 2185 establishes new restrictions on pharmacy benefit managers in Oregon.