



April 27, 2021

The Honorable Nancy Nathanson, Chair
The Honorable Khanh Pham, Vice Chair
The Honorable E. Werner Reschke, Vice Chair
The House Committee on Revenue

Re: H.B. 2462, a bill relating to pharmacy benefit managers

Dear Chair Nathanson, Vice Chair Pham, Vice Chair Reschke and members of the House Committee on Revenue:

On behalf of the Pharmaceutical Care Management Association (PCMA), we respectfully oppose H.B. 2462 as it establishes unnecessary legal burdens and will lead to higher prescription drug costs for Oregonians.

PCMA is the national trade association for America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage through independent businesses, health insurers, labor unions, and federal and state-sponsored health programs.

Our specific concerns are as follows:

Section 2 Creates Egregious Multiple Taxation

H.B. 2462 creates an unprecedented contractual obligation for a business to assume the responsibility of paying another firm's general business taxes. Unlike a retail sales tax, the corporate activity tax (CAT) is not a transactional tax—it is a tax for the privilege of doing business in the state, much like the income tax. **This legislation undermines the guiding principle of the CAT** by requiring businesses to amend their contractual agreements to compensate another business for their tax obligations. More importantly, the proposal fails to achieve the outcome sought by its proponents because the money exchanged for the tax payment is taxable under existing law. **Thus, a business receiving compensation to pay for the tax will only owe more tax.**

PBMs already pay the CAT on the total amount of prescriptions sold through retail network pharmacies. If H.B. 2462 were to become law, PBMs would not only pay tax on their portion of those network sales but also the additional amount owed by the pharmacy. This proposal violates a core principle of sound tax policy—fairness. The criteria for PBMs to pay the 0.3 percent tax imposed on pharmacies is based on "a new tax or fee" imposed on a pharmacy. This would include any number of state, county and local taxes making the numerator extremely large, particularly measured against the denominator of 0.3 percent of pharmaceutical sales, not even total pharmacy revenue.

Section 3 Creates a Retaliation Accusation by Complying with the Law

The actions considered retaliatory are activities that occur in the normal course of business and cannot legally be considered retaliation. As such, HB 2462 will invite confusion and needless



litigation which, in turn, will lead to higher costs for payers and patients. For example, Section 2(2)(a) refers to the need to amend the contract, yet Section 3(b) lists requiring a contract amendment as evidence of retaliation. Therefore, a PBM must amend the contract by law, but then be accused of retaliation for amending the contract.

Lack of Accountability

H.B. 2462 fails to establish any criteria for how a pharmacy establishes that a new tax or fee has exceeded 0.3 percent of their pharmaceutical sales. Additionally, any request by a PBM for supporting documentation establishing a pharmacy's claim that the 0.3 percent threshold has been met could be considered retaliatory, thus, prohibited by the bill. There is no audit mechanism to ensure that any tax is justified and paid accurately, leading to an opportunity for fraud that will be passed along to employers and patients through higher health care costs. It is very possible, even if unintended, for pharmacies to collect more than the increase in tax liability since they contract with multiple PBMs.

Annual Reconciliation will be Impossible under Current Contractual Reimbursement

Finally, PBM contracts with pharmacies are based on reimbursement for prescription drugs dispensed through virtual real-time adjudication. The new taxes and fees passed on to the PBM are to be paid based on the total drug sales over the term of the contract. Most importantly, pharmacies have contracts with multiple PBMs so requiring current contracts to be used is virtually impossible. Some reconciliation will be needed and can't be done without unraveling reimbursement contracts given these complexities.

For these reasons, we respectfully ask the Committee to not advance H.B. 2462.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Head", is written over the typed name.

Bill Head
Assistant Vice President