



Legislative Fiscal Office
 82nd Oregon Legislative Assembly
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Bill Title: Relating to pharmacy benefits; declaring an emergency.

Government Unit(s) Affected: Department of Consumer and Business Services, Oregon Health Authority

<Revised to reflect new information about information technology expenditures for the Department of Consumer and Business Services>

Summary of Fiscal Impact

2023-25 Biennium	General Fund	Lottery Funds	Other Funds	Federal Funds	Total Funds	Positions	FTE
Department of Consumer and Business Services	\$ -	\$ -	\$ 697,364	\$ -	\$ 697,364	5	2.50
Total Fiscal Impact	\$ -	\$ -	\$ 697,364	\$ -	\$ 697,364	5	2.50

2025-27 Biennium	General Fund	Lottery Funds	Other Funds	Federal Funds	Total Funds	Positions	FTE
Department of Consumer and Business Services	\$ -	\$ -	\$ 1,338,876	\$ -	\$ 1,338,876	5	5.00
Total Fiscal Impact	\$ -	\$ -	\$ 1,338,876	\$ -	\$ 1,338,876	5	5.00

Measure Description

This measure directs pharmacy benefit managers (PBM) to submit their contracts and amendments to contracts, as well as their provider manuals, to the Department of Consumer and Business Services (DCBS) upon request. The measure expands the definition of “pharmacy benefit manager” and requires PBMs to obtain an annual license from DCBS and pay a fee sufficient to cover the agency’s administration costs. This replaces the current requirement for PBM registration.

A pharmacy may file a complaint with DCBS to contest a finding of a PBM in response to an appeal related to reimbursement for a drug, or other PBM failure to comply with certain requirements. PBMs may not penalize a network pharmacy by imposing charges or fees, requiring contract amendments, cancelling, or terminating contracts, or demanding recoupment if a network pharmacy files an appeal, files a complaint with DCBS, engages in the legislative process, or challenges the PBM’s practices or agreements. The measure adds requirements for the annual reports PBMs must already submit to DCBS. Sensitive business, commercial or financial information, that is furnished to or developed by the Oregon Prescription Drug Program in connection with purchasing prescription drugs or contracting for PBM or pharmacy network services, is exempted from disclosure.

The measure also prohibits a policy or certificate of health insurance, or other contract providing for reimbursement of the cost of a prescription drug, from taking certain actions related to reimbursement and dispensing of 340B drugs. The measure exempts health maintenance organizations from these and other existing requirements.

This measure requires DCBS to hire at least one new full-time employees to assist in the regulation of PBMs, by January 1, 2025; this requirement is repealed January 2, 2025. The measure also includes an unspecified amount of Other Funds expenditure limitation for DCBS to carry out the work required under this measure.

Fiscal Analysis

The fiscal impact of this measure for DCBS is anticipated to be \$0.7 million Other Funds in the 2023-25 biennium, and \$1.3 million Other Funds in the 2025-27 biennium.

Department of Consumer and Business Services

While DCBS currently registers PBMs, this measure requires DCBS to instead license PBMs, and to conduct additional compliance and enforcement work. Compliance and enforcement work is also a current DCBS activity; however, this workload is expected to increase due to additional PBM operating requirements under this measure. Each complaint related to PBMs can include hundreds of insurance claims.

Costs for DCBS under this measure include five new permanent full-time positions (all 0.50 FTE in the 2023-25 biennium and 1.00 FTE in the 2025-27 biennium), which includes :

- One Compliance and Regulatory Manager 2 to implement the program and serve as a subject matter expert.
- Two Insurance Examiners to oversee the compliance and appeals process.
- One Financial Enforcement Officer to complete investigations and enforcement work.
- One Administrative Specialist 2 to perform licensing and assist with requests for information.

In addition to the costs of these positions and position-related services and supplies, expenses include an estimated \$29,300 in the 2023-25 biennium, and \$46,880 in the 2025-27 biennium, for legal support costs.

DCBS plans to use existing systems to support the work required under this measure, but should the agency require a new IT solution to capture additional data that is to be reported under this measure, costs could increase above what is included in this fiscal impact statement.

The measure requires that the fee adopted for licensing of PBMs be “sufficient to pay the department’s reasonable costs in administering ORS 735.530 to 735.552.” This language seems to indicate that program costs are to be covered by the PBM licensing fees; however, there are currently 59 PBMs registered with DCBS, and the annual registration fee is set at \$1,100. The fee would need to increase substantially to fully cover DCBS’ costs to administer ORS 725.530 to 735.552. DCBS notes that they will use funds from an insurer assessment to pay for the initial costs of implementing this measure, as well as any additional costs of administration once a PBM licensing fee is established, since regulation of PBMs falls under the Insurance Code.

Oregon Health Authority

There is no fiscal impact for the Oregon Health Authority.

Relevant Dates

The measure declares an emergency and takes effect on passage.

Section 6, 7, 9 and 10 apply to contracts between pharmacies and pharmacy benefit managers that are established, modified, or renewed on or after January 1, 2025.

Section 2 through 12 are operative January 1, 2025.

DCBS may take all steps necessary before January 1, 2025 to carry out the requirements under section 4 and 5 of the measure.