

HB 2840 -2 STAFF MEASURE SUMMARY

House Committee On Health Care

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Meeting Dates: 3/21, 4/9

WHAT THE MEASURE DOES:

Establishes prohibitions for pharmacy benefit managers (PBMs) registered in Oregon. Prohibits PBMs from requiring an insured person to fill or refill a prescription using a mail-order service. Prohibits PBMs from not allowing a pharmacist or pharmacy to provide information to a patient regarding the patient's cost share for a prescription drug; sell an insured person a lower cost alternative; or offer or provide an ancillary service. Prohibits a pharmacist or pharmacy from charging or collecting from an insured person a copayment that exceeds what the pharmacist will be reimbursed by the PBM. Prohibits PBMs from retaliating or penalizing a pharmacist or pharmacy.

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. Establishes the following PBM prohibitions: (1) requiring an insured individual to fill or refill a prescription using a mail-order service, (2) not allowing a pharmacist or pharmacy to provide a patient information on their cost share or selling an insured a lower cost alternative drug, (3) not allowing a pharmacist to offer or provide delivery as an ancillary service, (4) charging or collecting from an insured a copayment for a drug in an amount that exceeds the reimbursement the PBM pays to the pharmacy for the drug, (5) ability to recoup from pharmacist or pharmacy cost associated with claims for they have already been paid, unless otherwise required by law, and (6) penalizing or retaliating against a pharmacist or pharmacy for providing information to an insured about a lower cost drug or offering an ancillary service. Prohibits a PBM from requiring an enrollee to fill or refill a prescription at a mail order pharmacy, require a specialty drug be filled or refilled at a specialty pharmacy. Requires a PBM to permit network pharmacies to mail, ship, or deliver prescription drugs. Prohibits PBMs from imposing unreasonable requirements on specialty pharmacies that seek to contract with a PBM. Defines enrollee, mail order pharmacy, and specialty drug. Defines terms specific to claim reimbursement from PBMs to pharmacies. Modifies requirements specific to claim reimbursement and appeal process among PBMs and pharmacies. Requires PBMs to reimburse a network pharmacy's claim if appeal is upheld, allow a pharmacy to submit an adjusted claim and reimburse the adjusted claims without any charges to the pharmacy, and reimburse pharmacy for all subsequent claims for the drug until conditions are met.

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REVENUE: No revenue impact.

FISCAL: Statement issued: fiscal impact.

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 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), or 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 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 2840 establishes prohibitions between pharmacy benefit managers and pharmacies in Oregon.