

FISCAL IMPACT OF PROPOSED LEGISLATION

80th Oregon Legislative Assembly – 2019 Regular Session
Legislative Fiscal Office

Measure: HB 2185 - C

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Measure Description:

Imposes new requirements on pharmacy benefit managers registered in this state.

Government Unit(s) Affected:

Oregon Health Authority (OHA), Department of Consumer and Business Services (DCBS)

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

HB 2185 - C changes the requirements for pharmacy benefit managers (PBMs). Under this measure, a PBM:

- May not require a prescription to be filled or refilled by a mail order pharmacy as a condition for reimbursing the cost of the drug.
- May require a prescription for a specialty drug to be filled at a specialty pharmacy as a condition for reimbursement.
- Must reimburse the cost of a specialty drug filled at a network long-term care pharmacy.
- Must allow the network pharmacy to mail, ship or deliver prescription drugs as a service, but is not required to reimburse the delivery fee charged by a pharmacy unless that fee is in contract between the pharmacy and PBM.
- May not penalize a network pharmacy for informing an enrollee of the difference between out-of-pocket costs for a drug using their pharmacy benefit and the pharmacy's usual charge for a prescription drug.
- May not reimburse a 340B pharmacy differently than other pharmacies.
- May not retroactively deny or reduce claims for reimbursement except for in certain circumstances.

The measure also defines or modifies the definition of enrollee, health benefit plan, long-term care pharmacy, network pharmacy, pharmacy, pharmacy benefit, pharmacy benefit manager, specialty drug, specialty pharmacy, 340B pharmacy, mail order pharmacy, and out-of-pocket cost; and defines "generally available for purchase" as a drug for sale from a national or regional wholesaler when a claim for reimbursement is submitted; the measure also clarifies when a drug is not defined as "generally available for purchase."

Additionally, the measure sets restrictions on delivery verification and replacement costs for drugs not delivered. It modifies requirements related to the list of drugs for which maximum allowable costs have been established; a PBM must make the list available to the network pharmacy electronically, in a searchable manner, and with certain information included. Finally, this measure modifies the reimbursement appeal process. The measure applies to pharmacy benefits and contracts with PBMs that are entered into, renewed or extended on or after January 1, 2021.

Department of Consumer and Business Services

The Department of Consumer and Business Services (DCBS) may adopt rules to carry out parts of this measure. This is anticipated to have minimal fiscal impact for DCBS.

Oregon Health Authority

There is a potential fiscal impact for the Oregon Health Authority (OHA) as a result of this measure. The measure could increase costs for PBMs, which would in turn increase premiums for Oregon Educators Benefit Board (OEGB) and Public Employees Benefit Board (PEBB) health insurance plans. OEGB and PEBB's Statewide and Providence Choice plans, and PEBB's Moda plans, could be impacted by increased drug costs under this measure; and there are also potential impacts for the Oregon Prescription Drug Program (OPDP). The measure is not applicable to Kaiser Permanente plans.

Sections of this measure that OHA identified as having a potential fiscal impact include:

- The requirement that specialty pharmacies that serve long-term care facilities be reimbursed at cost;
- Not requiring a signature for mail delivery drugs, would could lead to drugs spoiling, being handled improperly, or being lost;
- Uncertainty about who bears the costs for replacement drugs shipped to a patient;
- A potential restriction on the ability of PBMs to add drugs to the maximum allowable cost list if these drugs are reimbursed at a lower rate than retail drugs;
- Delivering drugs by mail order is limited by this bill, which is sometimes a more cost-effective option;
- Uncertainty around the definitions of specialty pharmacy and specialty drugs;
- Uncertainty around 340B eligible claims, which could reduce 340B revenue.

OHA also anticipates a similar chain of events could increase Medicaid costs- higher costs for PBMs could lead to higher costs for Managed Care Organizations, which in turn would increase Medicaid costs. The fiscal impact to Medicaid is also indeterminate.