



# Pharmacy Benefit Manager Overview

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Division of Financial Regulation



Oregon Prescription Drug  
Affordability Board



Division of  
Financial  
Regulation

Department of Consumer  
and Business Services

# PDAB introduction

## Purpose:

- Created under SB 844 (2021) to protect Oregonians, state and local governments, commercial health plans, health care providers, pharmacies, and others within the health care system from the high costs of prescription drugs

## Composition:

- Five members and three alternates appointed by the governor and confirmed by the Senate
- Required background in clinical medicine or health care economics



Oregon Prescription Drug  
Affordability Board



# PDAB functions

- Drug Affordability Reviews – Identify nine drugs and at least one insulin product that may create affordability challenges for health care systems or high out-of-pocket costs for patients based on criteria adopted by the board
- Studying the entire prescription drug distribution and payment system in Oregon and around the world with the goal of lowering the cost of prescription drugs to consumers and health systems
- Make recommendations to the legislature for statutory changes



# Drug Price Transparency Program



- Operates under ORS 646A.680 to 646A.692 and administrative rules OAR 836-200-0500 to 836-200-0560



- Reporting manufacturers are required to register, file certain reports, and pay an annual fee to cover program costs



- Reporting manufacturers are those who meet all of the following:
  - ✓ Registered with the Oregon Board of Pharmacy
  - ✓ Manufacture prescription drugs for sale in Oregon
  - ✓ Set the drug's price (wholesale acquisition cost – WAC)

# Drug price transparency reporting

Program is directed by statute to receive:



- New drug reports: More than \$670
- Annual price increase reports: \$100 or more and 10 percent net yearly increase



- 60-day price increase notice: 10 percent or \$10,000 increase for brand name, 25 percent and \$300 increase for generic



- Insurers report: Top 25 most costly and most prescribed drugs, and the impact of drug costs on premium rates
- Consumers report: Personal price increase in Rx they have purchased.

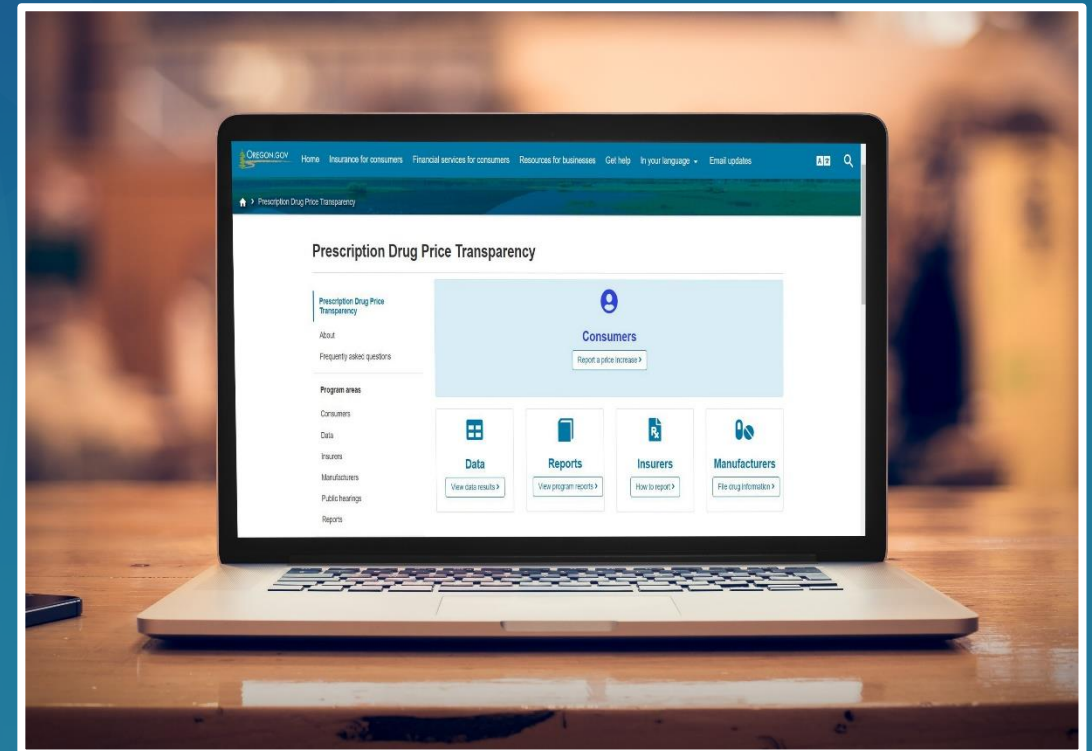
# Consumers and transparency

## Consumer reporting:

- Price increase reporting
- Stories and questions
- Outreach

## Transparency website:

- Reported data from manufacturers (non-trade secret)
- Information from insurers
- Consumer reports submitted



# Pharmaceutical supply chain

Typical supply for brand-name drugs dispensed through retail pharmacies.

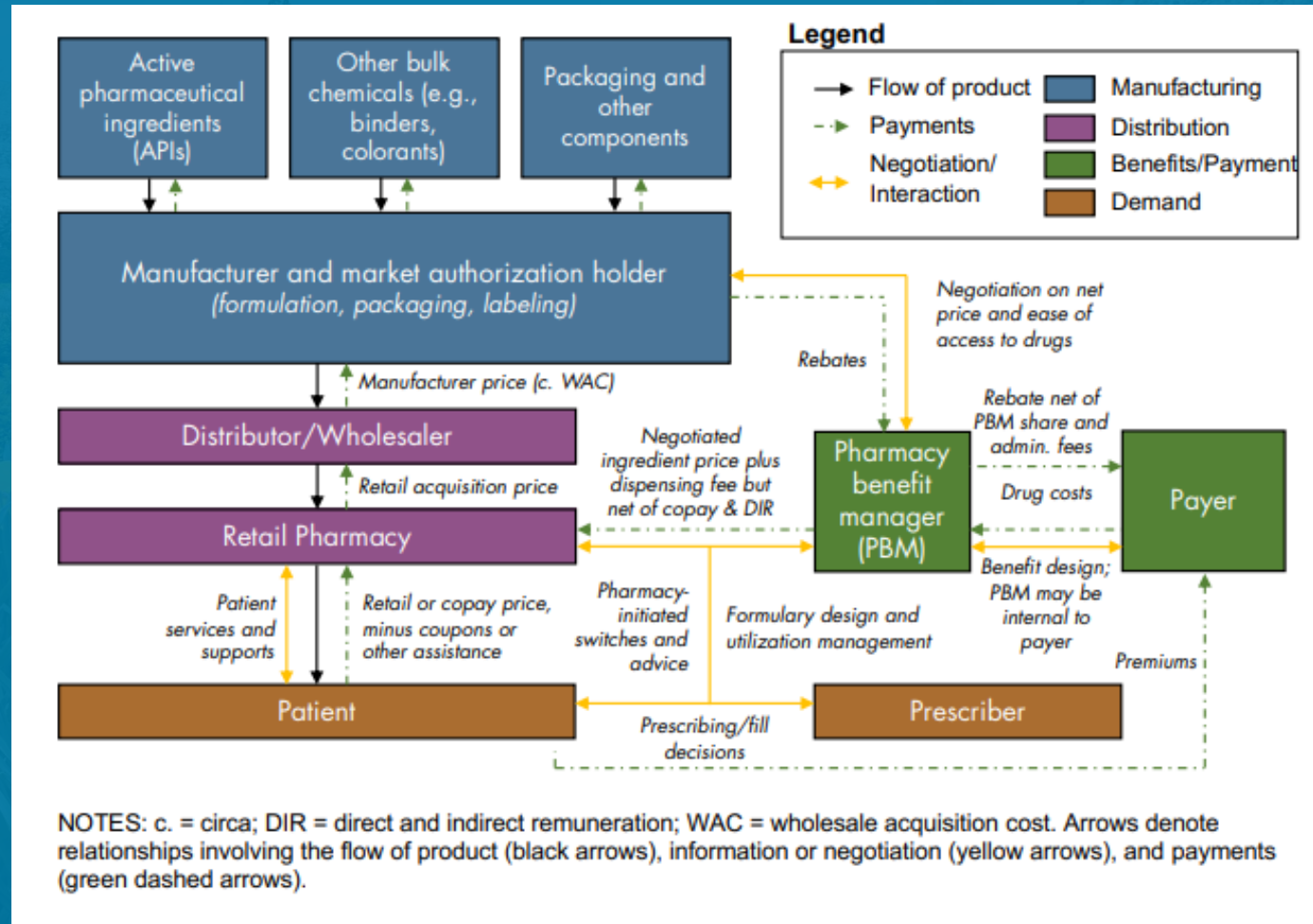
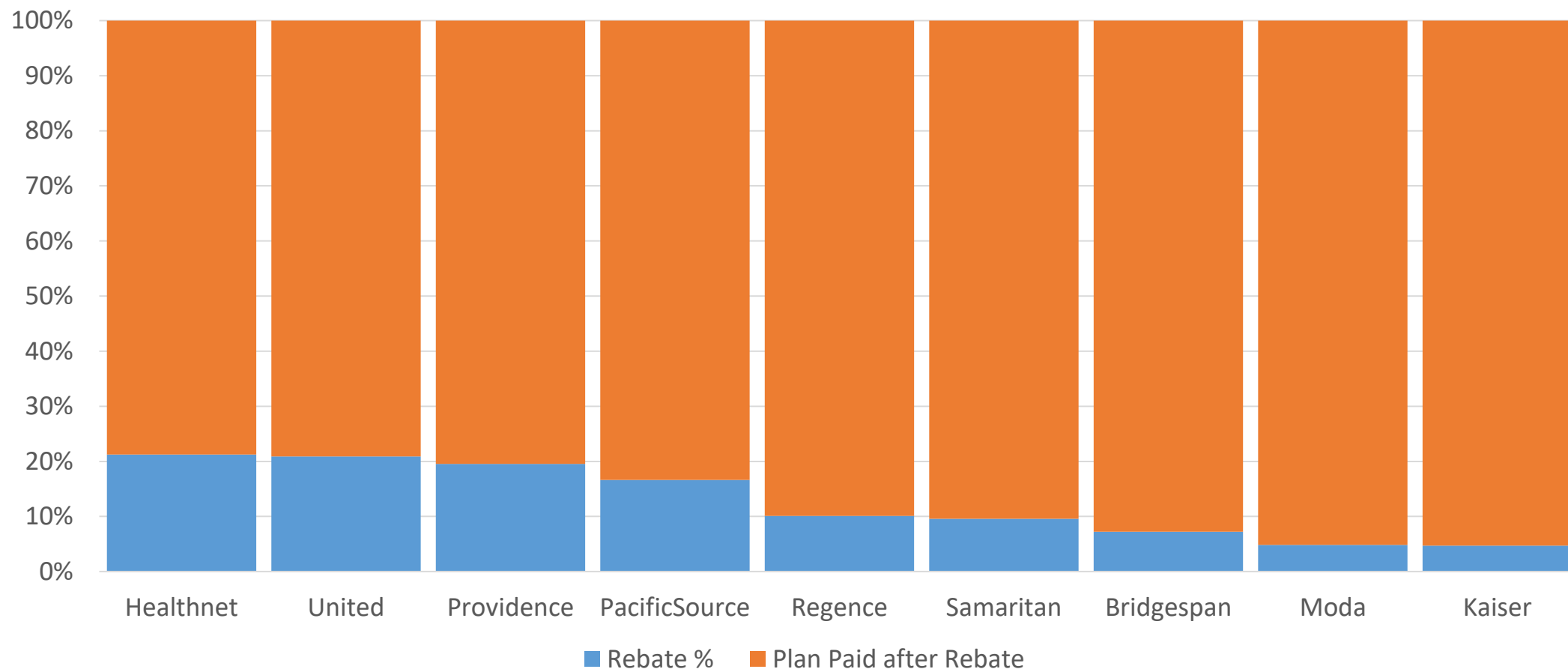


Figure from RAND Corporation funded by U.S. Department of Health and Human Services, 2021.

# Manufacturer rebates

## 2021 Rebates as % of Prescription Spending





# Oregon's PBM laws and regulations

## Oregon laws

- 2013 Oregon Laws Chapter 570 (HB 2123)
- 2017 Oregon Laws Chapter 73 (HB 2388)
- 2019 Oregon Laws Chapter 526 (HB 2185)

## Code sections

- ORS 735.530 – ORS 735.552

## Regulations

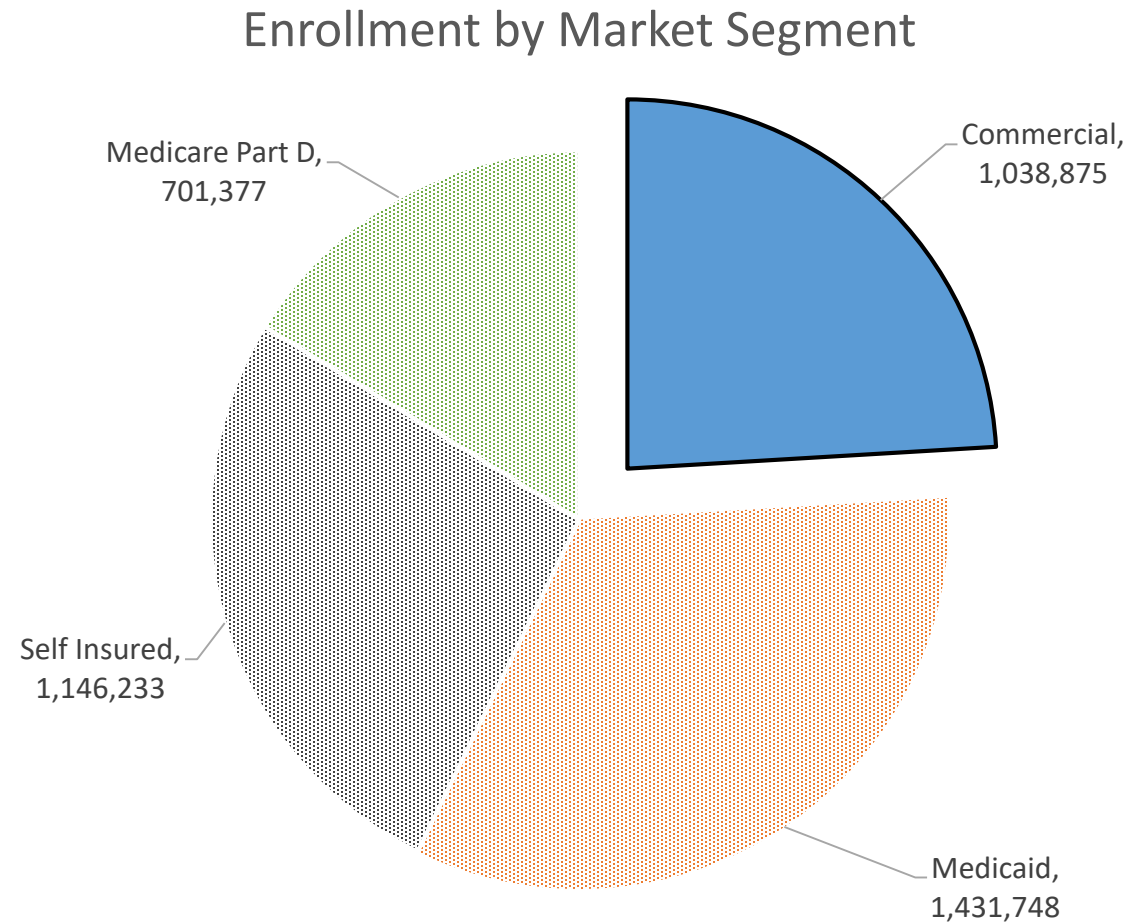
- OAR 836-200-0401 – OAR 836-200-0440

# Scope of Oregon's PBM law

**ORS 735.530(11):** “A person that contracts with pharmacies on behalf of an insurer offering a health benefit plan, a third party administrator, or the Oregon Prescription Drug Program.”

**Includes:** Commercial, OPDP

**Excludes:** Self-insured, Medicare Part D, some Medicaid



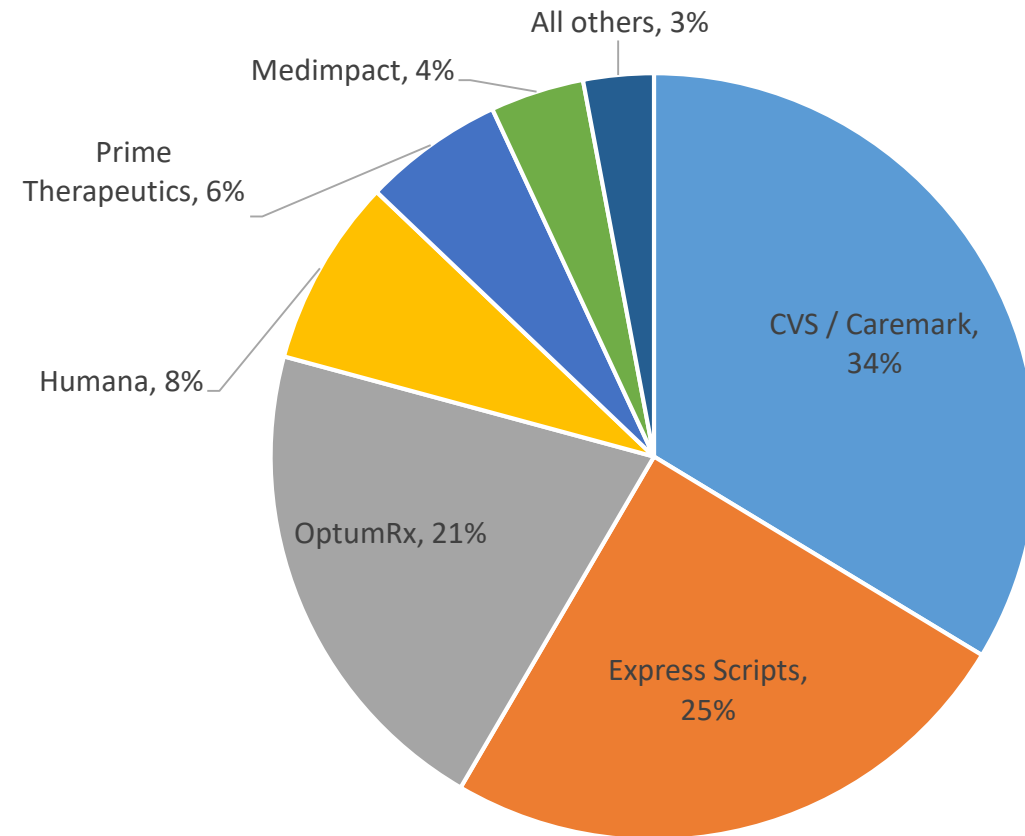
# Scope of Oregon's PBM law

## PBM market landscape

The PBM market is highly consolidated, with 80 percent of the market controlled by three companies: CVS/Caremark, Express Scripts, and OptumRx. The six largest PBMs, covering 97 percent of market share, are all registered with DCBS. This suggests that despite the limitations on what market segments we can regulate, PBMs that serve the vast majority of covered lives in the state are registered.

However, our ability to regulate registered PBM conduct with respect to Medicare, Medicaid, and self-insured plans remains untested.

National PBM Market Share (2021)



# PBM market conduct requirements: MAC

**Maximum Allowable Cost (MAC) requirements:** a PBM may not reimburse a pharmacy for less than the pharmacy's acquisition cost.

- A PBM must update its MAC lists to account for manufacturer price changes at least once every seven days, provide its lists to a network pharmacy upon request, and provide the sources used to determine MAC
- A PBM may not set MAC for a drug unless it has multiple sources or a generic equivalent generally available
- A PBM must have an appeals process for pharmacies to contest below-cost reimbursement under MAC. If an appeal is denied, the PBM must provide the pharmacy with a source for the drug at a cost at or below the MAC price
- A PBM may not include pharmacy dispensing fees in MAC

# Other PBM market conduct requirements

**Clawback:** A PBM may not retroactively deny or reduce reimbursement for a claim for the cost of services after the claim has been adjudicated (except in cases of fraud or error).

**Mail Order (2019):** A PBM may not require that a prescription be filled by a mail-order pharmacy as a condition of reimbursement.

**Gag Clause Ban (2019):** A PBM may not penalize a pharmacy for notifying a patient that the “cash” price of a drug would be less than the co-pay required under their coverage.

**Pharmacy Claims Audits:** ORS 735.542-735.552 set out a variety of restrictions on the scope and frequency of claims audits by PBMs.

# PBM complaints – recent

Complaints received since the most recent update to our statute in 2021 suggest that some PBMs remain noncompliant with Oregon's requirements. Some examples of likely noncompliance include:

- Providing out-of-date or unresponsive contact information to pharmacies, including disconnected phone numbers
- Failure to adjust payment after a successful MAC appeal
- Requiring pharmacies to use the services of a PSAO to submit MAC appeals
- Not updating MAC lists or failing to provide lists upon request
- Requiring a patient to fill prescriptions by mail order

# Enforcement authority over PBMs

- **ORS 735.533:** Denial, suspension or revocation of registration as a Pharmacy Benefit Manager
- **ORS 731.988:** Civil penalty of up to \$10,000 per violation of the insurance code.

# PDAB Recommendation #2 – Transparency in supply chain (rebates)

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Require PBM and GPOs to report manufacturers rebates to the DPT program.

## Currently

- Limited transparency in the supply chain.
- Rebates and payments influence price of drugs at the pharmacy counter and through health insurance premiums in ways unknown to regulators.

## Recommendation

- Require PBMs and GPO, which are either used or owned by PBMs to operate rebate programs, to report aggregated rebates and other payments from manufacturers annually to the DPT Program at DCBS and publish online.
- Additional reporting will allow PDAB and the Legislature to better understand the economic factors involved in drug pricing.
- Collect the following information from PBMs and GPOs annually:
  - ❖ The aggregated dollar amount of rebates, fees, price protection payments, and any other payments the PBM or GPO received from manufacturers related to managing pharmacy benefits for health insurance carriers issuing health benefit plans in the state
  - ❖ The aggregated dollar amount of rebates, fees, price protection payments, and any other payments the PBM or GPO received from manufacturers that were:
    - Passed to carriers issuing health benefit plans in this state
    - Passed to enrollees at the point of sale of a prescription drug in this state
    - Retained as revenue by the PBM or GPO



# Questions?

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