

History of PBM Legislation in Oregon

Because Congress has been politically paralyzed and unable to pass any federal regulatory legislation to reign in PBMs, pharmacists in Oregon and other states have toiled in good faith for over a decade to pass enforceable regulations.

OSPA, OSHP and a number of the pharmacy chains first introduced legislation addressing PBMs in 2012, HB 4122 would have required PBMs to register with the Oregon Board of Pharmacy on a regular basis if they did business in Oregon. As part of their registration, PBMs would have to disclose certain information including their financial statement, balance sheet, income statement and other items required by the Board. The Board would have been authorized to share the information collected with insurance companies that contract with the PBMs, pharmacies and pharmacists. The bill died in committee but initiated the first legislative work group on PBMs.

Oregon became one of the first states to pass legislation to regulate PBMs when HB 2123 was approved and signed into in 2013. The measure's provisions included:

- required PBMs to pay a fee and complete a registration application with the Department of Commerce and Business Services' Insurance Divisions to conduct business in Oregon.
- established limitations and requirements for an audit of pharmacy by a PBM designed to prevent the unfair targeting of minor clerical or administrative errors where no true fraud, patient harm, or financial loss has occurred.
- Imposed requirements on a PBM relating to their list of drugs for which maximum allowable costs have been established and set minimum requirements for appeal determination.

Eliminated from the measure was a provision to prohibit pharmacy benefit manager from creating administrative or financial incentives to encourage insureds to obtain prescription drugs from mail order pharmacies instead of retail pharmacies.

PBMs and many insurers fought the passage of HB 2313 and then its implementation. The Department of Consumer and Business Services (DCBS) did not have the human or financial resources to combat arguments from the opponents during the rule-making process including the intent of the various provisions and the overall authority of the agency.

HB 2875 was introduced by the Oregon Pharmacy Coalition to serve as a vehicle to tighten implementation of the breakthrough PBM legislation (HB 2123) adopted in Oregon in 2013 with the active backing of the associations. The bill did not pass because the chair of the House Healthcare Committee wanted to provide a little longer time for implementation. He has asked Vice Chair Rob Nosse (D-SE Portland) to work with the stakeholders during the interim and to prepare recommendations for 2016.

In 2016, pharmacists supported SB 1505 to compel PBMs to comply with HB 2013. The bill underscored statutory requirements and laid out penalties for failing to comply. It

provided standard regulatory and compliance tools used with other registration programs in Oregon. It passed on the Senate floor but died in Ways and Means.

However, the Pharmacy Coalition with the Co-Chairs of Ways & Means to include language in the Budget Bill declaring that DCBS has authority over Pharmacy Benefit Managers. It further instructed the agency to convene a workgroup to recommendations as to specific parameters of enforcement, such as fines, fees, complaint notification and investigation processes, inclusive of the authority the agency has with other health care system actors. The result was the passage of HB 2388 in 2017 which provided DCBS the statutory oversight and enforcement powers to help ensure compliance with the registration program. The bill gave the Insurance Division the tools it needs to appropriately enforce the law including:

- The ability to adjust the \$50.00 cap on registration fees to cover the costs of administering the law.
- Standardized enforcement provisions upon receipt of a complaint or upon the Division's on action.
- Compliance tools include civil fines up to \$10,000, registration suspension or revocation.
- Standardized investigative authority for the purposes of enforcing the registration program.

In 2019, the Legislature approved HB 2185 which established new restrictions on PBMs in an effort to help protect pharmacies and their patients from abuses. It included provisions to:

- Allow patients the option to use a local pharmacy instead of mandating use of a mail order pharmacy.
- Allow local Oregon pharmacies to mail or deliver prescriptions to their patients.
- Ensure a pharmacist can alert a patient that a prescription could be purchased at a lower cost if paid out of pocket rather than purchasing through the PBM benefit plan.
- Define specialty drugs to drugs which cannot be supplied to patients through a retail pharmacy.
- Allow Oregon long term care pharmacies the ability to dispense needed urgent drugs to fragile patients in nursing homes.
- Prevent PBMs from paying 340B pharmacies differently from other similar pharmacies in their networks.
- Create rules and enforcement provisions requiring PBMs to pay pharmacies, at minimum, their acquisition price for a drug.
- Eliminate retroactive additional fees clawed back after payments from PBMs to pharmacies have already been paid.

During the 2020 legislative session, the pharmacy community worked with Rep, Nancy Nathanson on several bills to reform PBMs. Those bills included HB 2460, HB 2462 and HB 2463. Some of the provisions included:

- Redefining Pharmacy Benefit Manager in Oregon law. This would allow the recent U.S. Supreme Court ruling eliminating the PBM ERISA exemption for to apply in Oregon to self-insured plans.

- Requiring PBMs to pay pharmacists a dispensing fee for prescriptions and an administrative fee for vaccines which reflects the costs of providing those services.
- Stopping the practice of requiring patients to use PBM owned pharmacies. The practice of moving patients to mail order pharmacies or specialty pharmacies outside of our communities continues to worsen and is hurting our community pharmacies.
- Eliminating “Pay to Play” fees pharmacies and pharmacists must pay to sign-up to receive payment for services.

These reform measures died in committee as the House Healthcare Committee chair didn’t think the committee was ready to tackle more reforms since the rules implementing HB 2185 just went into effect on January 1, 2021.

In 2022, SB 1529 was approved to require that all contracts between PBMs and pharmacies must comply with the statutory requirements of pharmacy benefit managers. Prior loopholes allowed PBMs to “auto-renew” or have “evergreen” contracts and escape the Department of Consumer and Business Services’ scrutiny.

The Legislature put forward legislation in 2023 to further address the unfair and abusive practices of PBMs by changing the registration requirement for PBMs to a licensure program with the state. This will provide greater enforcement authority to DCBS as well as the authority to subpoena records. Other provisions in HB 3013 included:

- Minimum payment to pharmacies which assures costs of drugs are reimbursed along with a dispensing fee to cover costs of dispensing and providing care
- Elimination of all fees after the point of care
- Assuring that patients can receive covered pharmacy services at any community pharmacy they choose.
- Preventing retaliation against pharmacies or pharmacists for filing appeals or speaking out about PBM practices.
- Changing the definition of PBMs to include all PBMs processing for payors, including CCOs.

Also in that session, HB 2725 was approved to help eliminate DIR fees by prohibiting retroactive denials or reduction of payment on claim reimbursements after a claim has been reviewed by the pharmacy benefit manager (PBM). The bill also provided funding to DCBS by authorizing the PBM registration fees to be increased to fund one full-time permanent position to implement the bill. In separate legislation, the Legislature also approved SB 192 which directs PBMs to file an annual report with DCBS to include the aggregated dollar amount of rebates, fees, price protection payments and any other payments from drug manufacturers.

And now HB 3212 hangs in the balance.