

# HB 3212 Informational Hearing:

## Carrier & Pharmacy Benefit Manager (PBM) Perspectives

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# Key Carrier Considerations

## Backdrop for Discussions:

- **Rising Drug Prices:** Drug prices have skyrocketed in the last decade and occupy increasing portion of plan spend. Manufacturers control drug pricing.
- **Consumer Impacts:** Oregonians are facing rising health care costs, and many consumers and employers are already struggling to afford health care. Now is not the time to raise costs.

## Reminders about Pharmacy Benefit Design:

- Pharmacy networks must serve all lines of business, including Medicaid and Medicare. Members must have access when they travel.
- Plans have network adequacy requirements
- Affordability is the chief concern of consumers; people purchase insurance to have predictable pricing and for financial protection.
- Insurance is highly regulated and regulations can have unintended consequences on plan design

# Oregon Landscape of PBM Laws & Regulations

What is already on the books to regulate PBMs and other elements of the pharmaceutical industry.

- 340B
- Audits
- Complaints
- Disclosure
- Fees
- Gag
- Licensure
- MAC Appeals
- Mail Order
- Market Conduct Requirements
- PBM Reporting
- PSAOs
- Specialty Drugs / Specialty Pharmacy
- Accreditation
- Biosimilars
- Copay Accumulators
- Generic Substitution / Therapeutic Interchange
- Pharmacy Networks
- Prompt Pay
- Synchronization of Prescription Refills
- Utilization Management (Prior Authorization & Step Therapy)
- Clinician Administered Drugs

## PBM-Specific Laws and Regulations:

- Laws: [ORS 735.530 through 735.552](#)
- Rules: [OAR 836-200-0401 through 836-200-0421](#)

# Pharmacy Closures in Oregon: a Closer Look

The Oregon State Pharmacy Association provided [a list of pharmacy closures](#) that occurred in 2023/2024. Upon examination through media reports (citations attached), we found a more nuanced story regarding the reasons behind these closures and the types of pharmacies affected.

Data provided by OSPA  
of closures for 2023/2024:

Pharmacy	City	Date
Walmart #2	Portland	3.24.23
Walmart #1	Portland	3.24.23
Walgreens	Portland	3.31.23
Walgreens	Portland	3.31.23
Tillamook Pharmacy	Tillamook	9.6.23
Rite Aid	North Bend	1.15.23
Rite Aid	Reeseburg	6.6.23
Rite Aid	La Grande	4.20.23
Rite Aid	Medford	9.18.23
Rite Aid	Portland	9.26.23
Rite Aid	Alsea	3.31.23
Physicians Building Pharmacy	Salem	7.1.23
Pharmacy.com	Portland (Powell)	8.30.23
Pharmacia NW	Portland	2.9.23
Pharmacia Cornell	Portland	2.9.23
Medicap #2	Albany	5.4.23
Medicap #1	Albany	5.2.23
Lone Pine Drug	Medford	1.15.23
Hi-School	Mt. Angel	9.29.23
Eden Healthcare	Medford	9.1.23
Dallas Fill Box	Dallas	3.22.23
CVS	Portland	10.25.23
CVS	Portland	10.25.23
Central Oregon Compounding	Redmond	1.15.23
Avalina Pharmacy	Salem	6.1.23
Rite Aid	Portland	9.31.23
Rite Aid	Canby	12.4.23
Rite Aid	Portland	12.3.23
Rite Aid	Warrington	11.28.23
Rite Aid	Florence	11.29.23
Rite Aid	Hines	11.27.23
Rite Aid	Milton-Freewater	11.28.23
Rite Aid	Salem	12.11.23
Rite Aid	St.Helens	december
Reedsport Pharmacy	Reedsport	12.19/23
Corvallis Clinic Pharmacy	Corvallis	
Access Prime		
Rite Aid	Hermiston	1.16.24
Rite Aid	Gresham	1.25.24
Rite Aid	Portland	2.1.24
ZoomCare	Tigard	3.15.24
Walgreens	Medford	5.2.24
Hillsboro Pharmacy	Hillsboro	6.1.24
Walgreens	Bend	6.17.24

Walmarts Closed in Portland - not pharmacies exclusive <https://www.koin.com/news/oregon/portlands-last-2-walmart-locations-closing-doors-friday/>

Walgreens - business model struggling nationwide <https://www.goodhousekeeping.com/life/money/a61473343/walgreens-stores-closing-list-2024/>

Rite Aid closing locations nationwide as they face massive opioid settlement. <https://www.justice.gov/archives/opa/pr/rite-aid-corporation-and-affiliates-agree-settle-false-claims-act-and-controlled-substance>

State accused local pharmacy owner of pocketing money under HIV program. Owner admitted in a sworn statement to owing \$2.5 million to the agency and agreed to pay it back in installments. According to the lawsuit, Patel used the money to help buy a home in Northwest Portland. <https://www.thelundreport.org/content/state-accuses-local-pharmacy-owner-pocketing-money-under-hiv-program>

Has an open location 1 mile away from closed location: 7901 SE Powell Blvd, Portland, OR 97206 and 5253 SE 82nd Ave UNIT 27, Portland, OR 97266

Pharmacia NW was owned by Medly Health a Health Care Tech Start-up Company that filed for Chapter 11 bankruptcy and sold assets to Walgreens <https://www.fiercehealthcare.com/digital-health/startup-pharmacy-medly-has-filed-bankruptcy-plans-sell-22-stores>

Medicap #1 & #2 – Franchise under a subsidiary of Cardinal Health, #15 on the Fortune 500 list (one of the big three wholesalers)

There is still a Lone Pine Drug in Medford open <https://lonepinedrug.com/>

“[Mt. Angel Drug] served both retail customers as well as long-term care patients in its capacity of being the pharmacy provider for the Providence Benedictine Nursing Home. When Providence Health decided to terminate its contract... the store lost about 50 percent of its business.” <https://ourtownlive.com/ourtown/?p=14329>

Eden Pharmacy Medford – faces a trade secrets lawsuit that alleges the owner steered patients and prescriptions from his former employer. <https://www.thelundreport.org/content/medford-pharmacy-sued-trade-secrets-lawsuit>

Pharmacies were inside Targets that closed due to crime/safety concerns. Whole store closed, not specific to pharmacy <https://corporate.target.com/press/statement/2023/09/target-closes-select-stores-to-prioritize-team-member-and-guest-safety>

Rite Aid closing locations nationwide as they face massive opioid settlement.

<https://www.justice.gov/archives/opa/pr/rite-aid-corporation-and-affiliates-agree-settle-false-claims-act-and-controlled-substance>

Part of Corvallis Clinic Primary Care. Not a traditional retail pharmacy <https://www.corvallisclinic.com/>

Access Prime - not a traditional retail pharmacy, did not contract with insurance companies. <https://www.btimesherald.com/2022/03/16/access-prime-pharmacy-opens-in-burns/>

Rite Aid closing locations nationwide as they face massive opioid settlement.

<https://www.justice.gov/archives/opa/pr/rite-aid-corporation-and-affiliates-agree-settle-false-claims-act-and-controlled-substance>

Not a retail pharmacy <https://www.peacehealth.org/>

Walgreens - business model struggling nationwide <https://www.goodhousekeeping.com/life/money/a61473343/walgreens-stores-closing-list-2024/>

# Timeline of Our Work Over the Last Year

## 2024 Interim

- Proponent's desire to address pharmacy reimbursement led Rep. Nosse to convene interim workgroup
- Pharmacists presented their "7 Pillars" of issues they would like to see legislatively addressed
- Carriers and PBMs responded with a presentation of negotiation points
- Many points of compromise were offered

## 2025 Session

- HB 3212 (LC 2723) was introduced and did not reflect any of the negotiated language from the 2024 interim workgroup
- Reps. McIntire and Diehl led a legislative session workgroup; both pharmacy advocates and carriers/PBMs presented on negotiation points
- Carriers/PBMs produced an amendment that addressed the negotiation points; pharmacy advocates disengaged

## Today

- Pharmacy advocates produced the -3 Amendment (now -6), which diverges greatly from HB 3212 and does not reflect conversations had over the past 10 months
- Carriers/PBMs have provided extensive feedback on most new concepts and have numerous concerns about long-term consumer impacts

## 2025 Legislative Workgroup Goal:

**Ensure convenient, in-person access to prescriptions throughout the state with minimal to no cost impact to the consumer.**

**The -5 Amendment addressed these goals; the –6 amendment did not.**



# Review: The 7 Pillars

Developed by pharmacy advocates during 2024 interim workgroup; a foundation for negotiations & HB 3212.

1. “Spread Pricing” Ban - prohibiting the practice of spread pricing in Oregon.
2. Reimbursement Restructuring – setting a floor for reimbursement and dispensing fees.
3. Access Anywhere – streamline/ease obligations to be in-network to increase access.
4. Equitable Terms – prohibiting preferential terms due to affiliation, ban patient steering.
5. SCOTUS/Rutledge – specific defining characteristics to ensure access for all.
6. Prohibitions on Retaliation – fixing mandates that force businesses to operate at a loss.
7. Good Faith Business Practices – administrative and contractual integrity in partnership.





# HB 3212 -5 Amendment

Results of 2024 interim workgroup conversations

## Pillar 1: Spread Pricing Ban

- **Proposal:** Require PBMs to offer both spread pricing and pass-through contract arrangements to health plan client.

## Pillar 2: Reimbursement Restructuring

- **Proposal:** MAC + \$0.50 dispensing fee for drugs subject to MAC pricing.
  - Tailored to Critical Access Pharmacies to target solutions and minimize consumer impacts.
- This would be the first time that a minimum reimbursement amount is set for commercial providers.

## Pillars 3 & 4: Access Anywhere & Equitable Terms

- **Proposal:** PBMs may not deny pharmacy the opportunity to participate in pharmacy network at preferred participation status if willing to accept network terms and conditions.
- **Proposal:** Allow pharmacists to decline to fill if reimbursement is less than net acquisition cost.





# HB 3212 -5 Amendment Continued

Results of 2024 interim workgroup conversation

## Pillar 5: SCOTUS/Rutledge (Lines of Business Impacted)

- **Proposal:** Fully insured and the Oregon Health Plan are subject to the bill.
  - Excludes ERISA plans.
- Does not include mail order or specialty drugs due to complex and unique nature of those markets.

## Pillar 6: Prohibitions on Retaliation

- HB 4149 (2024) has extensive provisions to protect pharmacies from PBM retaliatory actions.

## Pillar 7: Good Faith Business Practices

- **Proposal:** Allowing pharmacist to decline to fill a prescription that is reimbursed less than their net acquisition cost.

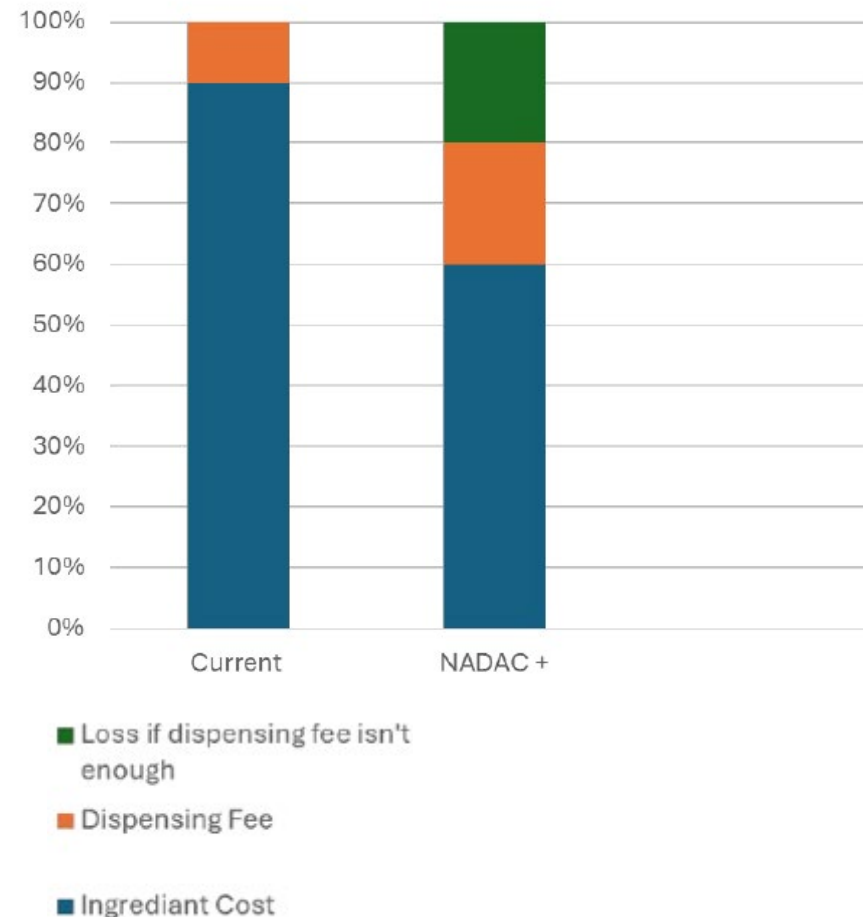
# Why this Approach? DCBS Analysis - Impact of NADAC+ Reimbursement

- OSPA Data Analysis

- Impact of NADAC+ Reimbursement
  - While NADAC is more stable, total reimbursement is roughly the same with NADAC + \$9.80

- Bottom Line

- Moving to NADAC + \$9.80 only minorly increases pharmacy revenues (\$0.26 per claim; total \$2,046) while significantly increasing the consumer cost share.
  - 74% of consumers pay <\$10 OOP
  - 60% of private sector employees on HDHP
  - **\$0.50 enhancement would be almost double the increase pharmacies would see, on average, in their revenue with NADAC + \$9.80 dispensing fee.**



# Additional Context: DCBS Analysis of OSPA Data

- Pharmacy Profit/Loss

- **> 90% of claims were paid more than acquisition cost**

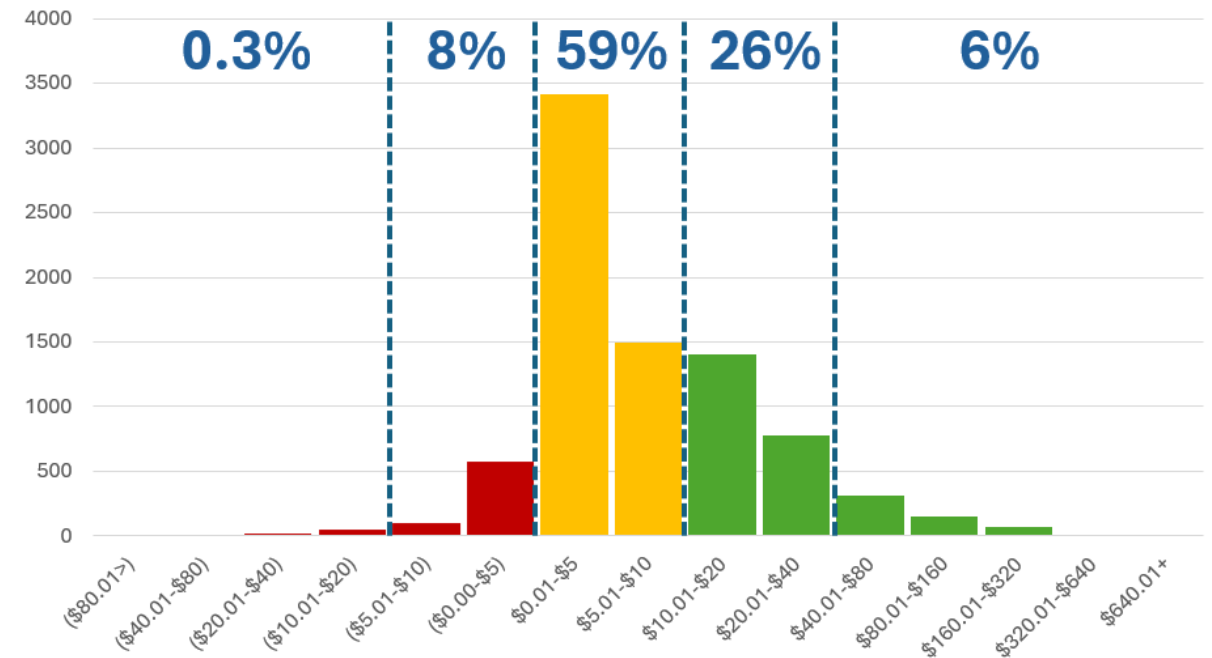
- 59% of claims up to \$10 profit/transaction
- 26% of claims \$10-\$40 profit/transaction
- 6% of claims >\$40 profit/transaction

- **8.3% of claims had negative reimbursement**

- **Note: The 6% of claims paid well above pharmacy acquisition costs more than made up for this loss**

- **MAC Profit Margin Q1+Q2 2024: \$108,617**

Histogram: Pharmacy net Profit / Loss per Prescription



This shows the percentage of claims that fell into various ranges. 59% of claims had a margin between \$0 and \$10. 26% of claims had a margin between \$10 and \$40. 6% of claims had a margin over \$40. 8% of claims were below cost for ingredients without taking pharmacy overhead into account. Less than 1% of claims reflected a loss of over \$10 on ingredient cost.

# HB 3212 – 6 Amendment: Negative Consumer Impacts

PBMs prohibited from requiring a pharmacy to participate in any other contract, including a contract with more than one carrier.

- **Results:** Loss of medication access options for Medicare and Medicaid members if pharmacies are allowed to cherry pick lines of business
- Undermines national pharmacy networks

PBM may not require pharmacy to meet unreasonable burdens, as defined by the Department of Consumer and Business Services by rule, including but not limited to requiring accreditation or certification in addition to what is required by the State Board of Pharmacy.

- **Results:** Conflicts with existing Oregon rules
- Compromise critical industry-accepted patient safety protections through required accreditations which ensure expertise and infrastructure in place for specialized pharmacy services.

# HB 3212 – 6 Amendment: Negative Consumer Impacts

Requires PBM contracts include specific contract rates and a clear breakdown of the rates associated with every individual carrier in the contract.

- **Result:** Requiring specific rates in contracts fails to recognize generic and brand drug prices fluctuate daily at manufacturer & wholesaler levels.

A PBM is prohibited from implementing or permitting any reduction of payment for pharmacy services provided by a pharmacy benefits manager to a pharmacy.

- **Results:** Inability to help consumers recover fraud, waste and abuse or overpayment due to inability to seek recoupment for ANY reason.
- Prohibits performance-based contracts

Prohibits PBMs from requiring the pharmacy to provide pharmacist services to a patient if the pharmacy will be reimbursed less than the pharmacy's drug acquisition cost and the cost of dispensing the drug.

- **Results:** Unpredictable loss of access if pharmacies decline specific fills based on reimbursement.
- Carriers and PBMs have NO VISIBILITY into pharmacy drug acquisition costs or the cost to dispense the drug.

# HB 3212 – 6 Amendment: Negative Consumer Impacts

PBM may not prohibit or restrict a pharmacy from, or penalize a pharmacy for, charging an enrollee an additional fee that is above the copayment or deductible amount.

- **Results:** Balance billing makes consumer health care costs unpredictable.
- Added charges at the pharmacy counter with no notice or oversight, including the inability of members to shop ahead of time, select the lowest cost option, or have a predictable pharmacy experience.

**NEW** to -6: Establishes new requirements for provider manuals, effectively making them a part of the contract between a PBM and pharmacy.

- Result: Undermines providing pharmacies with timely “How To” guidance on how claims are expected to be adjudicated from both a regulatory and contractual perspective.
- Antithetical to HB 3212 which explicitly defined contracts as separate from provider manuals that provide operational guidance.





## Ongoing Concerns and Challenges

**Several concepts** in the -3 and -6 amendments were not discussed during the interim session or legislative session workgroups.

**Carriers transparently offered** the -5 Amendment, which includes enhanced reimbursement and balanced solutions that address the seven pillars without putting consumers in the middle. We never received a response. However, the goalpost continues to move with every amendment drafted.

**We remain committed** to continued engagement. However, the -6 amendment does not reflect the past 10 months of negotiations and was developed without regard to the workgroup goal or the pharmacists' seven pillars.

**Moving the -6 amendment forward will have significant negative consumer impacts including reduced access to medicines, increased costs and compromised patient safety.**