

2021 LEGISLATIVE REPORT

OREGON STATE PHARMACY ASSOCIATION



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GENERAL SUMMARY

What Happened?

That is the question being asked by all but a few who have experience with the Oregon State Legislature.

On Saturday, June 26th at 5:37p, the 81st Assembly adjourned the 2021 Legislative Session. Thousands of bills (~2400) were introduced, hundreds passed (~680). The long, 160-day Session worked and then wrapped up a day early ... without a single advocate's footstep echoing in the hallway.

It is difficult to have a clear memory of just “what happened?”. In a matter of five months the grinding work of the Legislature persisted despite covid, wildfires, ice storms, the budgetary impacts of Measure 110 passing, an unprecedented challenge to the Speaker's reign, workplace sexual harassment charges, expulsion and armed trespassers - and who could overlook the BILLIONS of one-time federal dollars¹.

Just what exactly happened is murky at best.

Fences and Screens.

This was the way that business was conducted. Behind fences and on computer screens 89 legislators, socially distanced and (mostly) wearing masks, carried out their elected duties in relative isolation from the public and the lobby.

The Republicans in both Chambers protested the insistence of the Majority Party to press ahead with the session while no other people were allowed to be present. Meanwhile, Democrats are still not “quorum proof” and so need to ensure enough of their colleagues from across the aisle remain in the building for work. This made for a delicate dance of parliamentary procedure and negotiations. For instance, the R's employed rules of the game to slow down the pace with which bills could pass, creating a back log and playing against the clock. They leveraged these rules to create opportunities to scuttle specific pieces of legislation or to create a shift in certain power dynamics.

¹ Oh! and the September Redistricting Special Session that will add a 6th Congressional Seat and most likely shake up the House Congressional delegation in an interesting way!

The Democrats in both Chambers were not going to be deterred from producing policy that they know their base can get behind. This session has been wrapped up with a “Reform” ribbon; leadership is packaging dozens of police and criminal justice reforms, environmental and health justice measures and a funding plan that aims to push forward these programs and more. Much more.

COVID-19 kept lobbyists and their clients out of the building. It also kept Legislators in their offices and socially distanced, meaning they were not even seeing each other in the usual way. Committee meetings, public hearings - even votes were conducted online². Missing the nuances of in person communications, however, proved to have a deleterious effect on morale, if not the advocacy itself.

Once coping with the pandemic gave way to social unrest and the armed clashing of movements, beliefs, authorities and individuals the decision was made to lock it all down. Safety for all who work in the Capitol building is paramount, so sadly - albeit rightly - all of this was happening behind chain link fences and plywood. Even those devices did not defend against a potentially dangerous moment in time, as armed and angry activists burst through Oregon’s hallowed halls.

Counter to best instincts and conventional advocacy, this entire session occurred with very little (read: nearly zero) person to person interaction. The over-arching positive to this situation is that citizens from all across the state were able to participate in the sausage making without having to take inordinate amounts of time off of work or travel for days. Politics, however, is a full-contact, team sport and requires the kind of exchanges that are best executed in close proximity.

To be sure, well before there was the threat of politically volatile rallies or insurrections there were fences put up around the capitol building. They guard the massive construction project that the building has been undergoing for years. They are the same fences that are set to be there until August of 2023 - it is not just covid that will keep us out of the building during the next couple of Sessions. You read that correctly; prepare for another unconventional session in 2022.

Save America Funds!

This budget cycle is outrageous. \$29 Billion. It is double prior budgets with the help of federal funds, a crush of cannabis tax dollars and the otherwise rosy economic forecasts simply flying in the face of how the last 18 months have felt. Hundreds and hundreds of millions of dollars have been dispersed to help renters, the unemployed, victims of wildfires, communities crippled by covid and legislators’ districts with outstanding projects or deferred maintenance. Leadership also set aside \$1 Billion for future spending/reserves, while celebrating fulfilled service levels and covering one-time expenses and programming needs.

Wins, Losses & Draws...

Depending on when you ask who about what, nearly each legislator will claim a successful session. All of Oregon’s districts and constituencies benefitted in some way from the advocacy of their State Representative and State Senator - [click here](#) to find your legislators webpage, latest newsletter and list of wins. No doubt, you’ll also be able to share their lament on some

² Microsoft Teams to be exact and it made for some amazing and amusing footage from time to time.

losses. For good or for bad, the escalating pace and breadth of these long legislative sessions is matched only by what appears to be an increasing appetite for retrieving failed packages in the short session. So, no matter whether there is work to celebrate in terms of meaningful public policy, there will always be more to do.

OOJLC LEGISLATIVE PRIORITIES

In spite of the COVID-19 pandemic, a number of significant health care policies were considered during the 2021 session. And, while the COVID precautions and virtual process made direct advocacy more challenging for everyone, the voice of pharmacy was heard!

For the past nine years, OSHP and OSPA have worked together on advocacy issues through the OSPA/OSHP Joint Legislative Council (OOJLC) which directs a combined approach to legislative issues. The OOJLC works in collaboration with the Oregon Pharmacy Coalition to consolidate discussion points and determine the most efficient process for decision-making and action with respect to pharmacy issues in Oregon. The Coalition assists OSPA and OSHP in identifying the key issues important to our practices, creating workgroups to meet with legislators, and monitoring important legislative concerns. This collaborative relationship has led to a very successful approach to the legislative session with regard to pharmacy interests.

During the legislative session, the OOJLC conducted the business of legislative oversight and engagement in advocacy meetings often twice a month. And, as in 2019, the number of bills impacting pharmacy was overwhelming. OOJLC's Legislative Team tracked approximately 125 bills that affected the pharmacy profession. Bills ranging from the prescription of PEP/PrEP, PBM reforms, addressing the Commercial Activities Tax, drug pricing, and telemedicine and tele-pharmacy were among the dozens of issues that the OOJLC worked on this session. A summary of all the bills monitored by the OOJLC and their history is attached.

We do not believe the attention and interest in pharmacy, pharmacists and the interplay within the healthcare delivery system is going to relent anytime soon. We need your voice. The items below and reported on within were only successful (or mitigated) by the time and attention of your colleagues in pharmacy. Please attend our coalition meetings as we get underway for 2022.

Some of the more significant legislation that OOJLC played an active role in during the 2021 Legislative Session included:

Allows Pharmacists to Prescribe PEP/PrEP and requires insurers to cover the costs of pharmacist services

HB 2958 allows a pharmacist to prescribe, dispense and administer preexposure prophylactic antiretroviral therapies and post-exposure prophylactic antiretroviral therapies and provides reimbursement for pharmacist provided patient care services. Introduced during the 2020 session short session which imploded when the Republicans walked out of the Capitol over climate change legislation, OOJLC worked with the sponsors of the measure to ensure parity for reimbursement of pharmacist provided patient care services.

While pharmacists are ready and willing to provide these services, a lack of mandatory health plan reimbursement of pharmacist services limits patient access to this care. HB 2958 builds on prior bills to reform Oregon's pharmacy statutes and insurance code. HB 2028 signed in 2015 added pharmacists to the insurance code as a medical provider who 'may' be reimbursed for services provided. Despite this, the majority of health benefit plans refuse to reimburse pharmacists and those who do often provide reimbursement that is unsustainable and below that of any other medical provider. HB 2397, signed in 2017, established the Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) consisting of Oregon physicians, nurse practitioners and pharmacists which has resulted in the implementation of several categories of independent pharmacist prescribing.

HB 2958-B would require reimbursement by health plans and pharmacy benefit managers to pharmacists who provide evaluation and prescribing services legally included in their scope of practice. These services would be providing the same care currently provided by other providers with improved access in their local neighborhood and would facilitate preventative services and public health measures to a wide variety of underserved communities in local and easily accessed geographic locations throughout Oregon. Provision of these services by pharmacists will both decrease costs and improve access to health care for many underserved Oregonians. Parity for reimbursement for pharmacist provided patient care services will provide the economic basis for the provision of these critical preventative and chronic health care needs.

The measure was approved by significant majorities in both chambers and has been signed into law by the governor.

CAT Tax Relief

Because pharmacies are uniquely impacted by the Commercial Activities Tax (CAT) approved by the Legislature in 2019 and cannot pass along any of the cost burden to the consumer, OOJLC pursued several different strategies in the 2021 session to address this situation. In essence, pharmacies are being double-taxed as they have to pay the taxes of the drug suppliers and again pay the CAT tax when they sell the drugs.

Introduced at OOJLC's request, HB 2259 would have provided an exemption to the CAT for the retail sales of prescription drugs. An amendment to SB 164, a bill addressing several technical fixes to the CAT, was drafted to exempt the retail sales of prescription drugs. However, neither HB 2259 nor the amendment moved forward as it became clear that the House and Senate Democrat leadership were not prepared to approve an exemption for fear of opening the gates to other stakeholder groups requesting exemptions. It was also noted that because the tax collections didn't start until the second quarter of 2020, it was unknown yet what the annual revenue loss to the Student Success Fund would amount to which caused anxiety among many of the education stakeholders.

Another way to mitigate the costs was included in HB 2462 which would require PBMs to adjust the reimbursement paid to pharmacies to take into account the costs incurred from the CAT. The bill included other PBM reforms provisions and attracted the opposition of PBMs and insurers. However, the House Revenue Committee Chair Nancy Nathanson (D-Eugene) indicated an interest in trying to address the issue on behalf of pharmacies and the Speaker agreed to refer it

from the Health Care to the Revenue Committee. The Revenue Committee nor the Legislative Revenue Office staff have much of a background in how prescription drugs are prescribed, dispensed, purchased and distributed. This unfamiliarity with the subject along with no real revenue data yet from the CAT resulted in the bill languishing in House Revenue. The chair has expressed an interest in visiting this subject during the interim to see if there is a way to address the burden placed on pharmacies.

PBM Reforms

During this past interim, the pharmacy community worked with long-time legislative supporter Rep. Nancy Nathanson (D-Eugene) on several bills to reform PRMs. 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. Some PBMs have stopped paying this fee and claim to pay as part of the vaccine payment, but often no extra reimbursement occurs.
- 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. What is unacceptable is that the PBMs, who make the rules for patients and pharmacy benefits, have the right to force patients to use a pharmacy the PBM owns!
- Eliminating “Pay to Play” fees pharmacies and pharmacists must pay to sign-up to receive payment for services. PBMs are charging pharmacies to apply to be in their network and these fees have risen dramatically. Now it can cost thousands of dollars for a single pharmacy to join a single PBM network.

The bills were assigned to the House Health Committee which had a new chair – second term Rachel Prusak (D-Tualatin/West Linn). A supporter of the pharmacy community, she helped pass HB 2185 in 2019. However, she declined to advance the reform measures as the rules implementing HB 2185 just went into effect on January 1, 2021 and she didn’t think the committee was ready to tackle more reforms.

Prescription Drug Affordability Board

SB 844 establishes a Prescription Drug Affordability Board in the Department of Consumer and Business Services to review prices for nine drugs and at least one insulin product, from among drugs reported to the Prescription Drug Price Transparency program by prescription drug manufacturers, drugs reported by insurers in filings and insulin drugs marketed in this state, that are expected to create affordability challenges for health systems or high out-of-pocket costs for patients in Oregon based on specified criteria. The measure authorizes the Board to establish and assess fees against manufacturers of prescription drugs sold in Oregon for the costs of carrying out the duties of the Board.

As originally drafted, the bill would have required the Board to establish upper payment limits for drugs that are expected to create affordability challenges and would have prohibited health care providers from billing for an amount that exceeds the upper limits. OOJLC strongly

opposed the upper payment limit provisions as the drug supply chain in the U.S. is just not built for this model.

Pharmacies do not determine the price a patient pays for prescriptions (copay), they do not influence market drug prices, nor do they have influence over costs of drugs to pharmacies. Therefore, mandating pharmacy upper price limits does not in turn require market adjustments from manufacturers or PBMs. This leaves pharmacies and patients in the middle. Pharmacies currently operate at a profit margin approaching 0% for prescription drugs. For pharmacies to remain in business with price limits, margins will need to be maintained. Pharmacies will be forced to refuse to sell price limited drugs to patients if we cannot purchase them at lower prices.

Other health care providers, hospitals and clinics also joined in echoing concerns about the impact of upper price limits on their practices, health systems and patients. PhRMA waged a public awareness campaign against SB 844 as drafted through newspaper and radio ads. As a result of these efforts, the measure finally was amended to remove the upper price limits and allow the Board to make recommendations only on how to make prescription drugs more affordable. The amended version then received enough support from the Democrats in both chambers to approve it without any Republicans support.

Telepharmacy

SB 629 allows pharmacists to use telepharmacy to deliver pharmacy services to patients at remote locations. The measure which was supported by OSPA and OSHP permits appropriately trained and equipped pharmacists to use telepharmacy to remotely oversee pharmacy operations and provide distributive, clinical, analytical, and managerial services. It authorizes the Oregon Board of Pharmacy to adopt compatible regulations that enable the use of United States-based telepharmacy services within and across state lines for appropriate practice settings.

Many small rural hospitals rely on contracts with local retail pharmacists to provide pharmacy services at the hospital. Telepharmacy can allow those pharmacists to devote their limited onsite time to the oversight of drug therapy management, inventory, controlled substances control, and policy and procedure development, rather than real-time order review verification. In addition, telepharmacy effectively allows for the work of one pharmacist to be spread across several small-volume settings, permitting them to share the expense of such services and creating an opportunity to provide 24-hour pharmacy services.

SB 629 passed by overwhelming margins in both chambers and was signed into law by the governor.

Payment Parity for Telemedicine Services

HB 2508 Requires the Oregon Health Authority to reimburse health services delivered via telemedicine if specified criteria are met including reimbursing a provider at the same rate for a

health service delivered in person or through telemedicine. The bill directs OHA to adopt rules to ensure that coordinated care organizations (CCOs) reimburse for telehealth services. It requires commercial plans to cover telemedicine during a state of emergency if criteria are met and to reimburse providers at the same rate for a health service delivered in person or via telemedicine.

OSPA and OSHP joined a coalition led by the Oregon Medical Association to secure passage of HB 2508. Approved by significant majorities in both chambers and signed by the governor, the measure specifies that OHA, CCOs and health plans are not required to pay for a health care service if it is not included in the national coding standards. It requires regulated health insurers to ensure meaningful access to telemedicine services. The Department of Consumer and Business Services shall report to interim committees of Legislative Assembly, no later than March 1, 2023, on the impact of required reimbursement of telemedicine health services by health benefit plans on the cost of health insurance premiums in Oregon. The measure went into effect on its passage.

Over-the-Counter Pseudoephedrine

HB 2648 allows Oregon pharmacies to dispense pseudoephedrine without a prescription if the pharmacy uses an electronic tracking system and the individual provides valid identification. Introduced in the 2019 session and again in 2020, the measure finally passed in 2021. It allows a pharmacist or pharmacy technician to transfer a drug containing pseudoephedrine without a prescription to a person who is at least 18 years of age and presents a valid government-issued photo identification.

Oregon will join more than 30 other states that have implemented a system to electronically track "OTC sales of medications containing meth precursors" by using the National Precursor Lox Exchange (NPLeX), an electronic logging system used by pharmacies and law enforcement. The log will be required to be retained by the pharmacy for at least two years from the date of the transaction. HB 2648 permits law enforcement to obtain information contained in the log through a subpoena accepted by the Board of Pharmacy. The bill becomes operative January 1, 2022.

Health Care System Mergers and Acquisitions

HB 2632 requires approval from the Department of Consumer and Business Services or the Oregon Health Authority before any mergers, acquisitions, contracts or affiliations of health care entities and other entities if the entities had \$25 million or more in net patient revenue in the three preceding fiscal years or will result in one entity having an increase in net patient revenue of \$10 million or more. The bill was introduced to address concerns regarding the effects of hospital and provider consolidation in access, quality, costs, and market competition.

While the OOJLC took no public position on the bill, it was noted that mergers have saved struggling rural hospitals and maintained services in areas with no other health care options. As passed by the Legislature, the bill requires OHA to develop criteria approved by the Oregon Health Policy Board for the consideration of requests by health care entities to engage in a material change transaction involving health insurers to be submitted first to the Department of Consumer and Business Services, which is then required to notify OHA to conduct the review.

The measure specifies the evaluation criteria including impacts on costs, access, health equity health outcomes and competition and permits OHA to conduct examinations and investigations to enforce the provisions of the bill.

Insulin Cost-Sharing Limits

HB 2623 prohibits health benefit plans from imposing cost-sharing or other out-of-pocket costs in excess of \$75 for each 30-day supply or \$225 for each 90-day supply of insulin prescribed for the treatment of diabetes. It requires the Department of Consumer and Business Services (DCBS) to annually increase the out-of-pocket cost maximum by the percentage increase in the cost of living for the previous calendar year. The bill prohibits health benefit plans from subjecting insulin coverage to the deductible. It applies to health benefit plans issued, renewed, or extended on or after January 1, 2022.

Supported by both OSPA and OSHP, the bill received overwhelming support in both the House and the Senate and was signed by the governor.

OTHER BILLS OF INTEREST

PDMP Fee Increase

HB 2074 increases prescription monitoring program fees from \$25 to \$35. The measure takes effect on 91st day following adjournment sine die.

Establishes the Office of Pharmaceutical Purchasing

HB 2080 would have established the Office of Pharmaceutical Purchasing in Oregon Health Authority and specified duties. The bill would have required the office to administer a multistate prescription drug purchasing consortium. It also authorized the Oregon Health Authority to require prior authorization for drugs under specified conditions. The OOJLC was skeptical of the bill and evidently lawmakers were to as it never got out of the Senate Health Care Committee.

Prior Authorization Reporting Requirements

HB 2517 requires the Oregon Health Authority to compile and annually post to website report on information reported to authority by coordinated care organizations regarding requests for prior authorization. The bill also requires insurers offering health benefit plans to report specified information to Department of Consumer and Business Services regarding requests for prior authorization. It creates new requirements and modifies existing requirements applicable to utilization review by insurers offering health benefit plans and health benefit plans offered by Public Employees' Benefit Board and Oregon Educators Benefit Board. As approved by the Legislature and signed into law by the governor, HB 2917 new requirements applicable to step therapy requirements imposed by entities providing health insurance, medical services contracts or health care service contracts, multiple employer welfare arrangements and pharmacy benefit managers.

Prior Authorization for Mental Health Drugs

HB 3045 extends sunset on requirement that Oregon Health Authority reimburse cost of mental health drugs in medical assistance program. The bill prohibits OHA from requiring prior authorization for mental health drugs under specified conditions. It defines "mental health drug" and requires the Pharmacy and Therapeutics Committee to consider recommendations of the Mental Health Clinical Advisory Group in making recommendations to OHA regarding mental health drugs to be included on any preferred drug list or Practitioner-Managed Prescription Drug Plan.

Regulates Mail Order Prescriptions for Medical Assistance Recipients

SB 558 prohibits an insurance policy or contract that provides coverage for prescription drug to require prescription for a drug prescribed for medical assistance program recipient to be filled or refilled at mail order pharmacy or to prohibit a prescription form being filled by a local pharmacy. The bill does create an exception regarding specialty drugs.

Modifies Providing Test Results to Patients

SB 781 requires clinical laboratories to provide test results without unreasonable delay to patient or patient's authorized representative. The measure clarifies that an authorized representative of patient has access to test results unless the physician, dentist, or other person requesting the laboratory test has a reasonable belief that an exception to information blocking applies.

This report has been prepared by OOJLC's government affairs advocates Niki Terzieff and Bill Cross.