

2022 LEGISLATIVE REPORT

OREGON STATE PHARMACY ASSOCIATION



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Arriving at the Point of Inflection

The 2022 short legislative session appears to have kept the temperature relatively low. A walk out and hard ball negotiations - transactional politics that became a hallmark of the past decade in Salem - didn't splash across the headlines or drown social media feeds. There was no breaching of thresholds, many standard divisive issues were muted and the public was allowed back in to the Capitol. We hardly even heard from the Executive Office as the final term of Governor Brown's administration winds down.

The Senate, almost despite itself, was business as usual. President Courtney, after having announced he'll be retiring this year, presided over the final session of a nearly 40 year career in public office. Leader Rob Wagner (D - Lake Oswego) held together a cranky caucus which had experienced something of a personality disorder as more progressive members stretched to get out from under the moderate routine. Among those Democrats that will be leaving are the noted Sen. Lee Beyer (D - Springfield) and Sen. Betsy Johnson (D - Tillamook), the latter running for Governor as a Non-Affiliated candidate (note: this is distinct from the Independent Party).

In the House, a full suite of changes took place as long time Speaker Kotek stepped away to run for Governor and stepping down in the aftermath was Leader Barbara Smith Warner (D - NE Portland), who has announced she will not run for re-election. Instead of selecting known interested party, Rep. Janelle Bynum (D- Happy Valley), to be the first Black woman to be Speaker of the House, the caucus installed Rep. Dan Rayfield (D- Corvallis) pointing to his depth of experience in leadership as the powerful Co-Chair of Ways and Means - top dog of the budget committee.

This created a shuffle of new personalities and life experiences. Now as Speaker, Rayfield left a gavel up for grabs ... and a big one. Rep. Tawna Sanchez (D - North Portland) stepped up and has earned the distinction as the first Native American woman to have the power of the pen. New Majority Leader Julie Fahey (D - South Eugene) raised up a team of fresh faces for leadership, including Rep. Andrea Valderrama (D - East Portland) and Rep. Jason Kropf (D - Bend).

That delicate knit of new personalities in nearly every leadership position in the House, coupled with the sun setting on President Courtney and several of his brand of moderates in the Senate resulted in a quiet, yet driving session. Especially quiet perhaps, since they had Sen. Dallas Heard (R - Myrtle Creek) barred from the Chamber for repeatedly protesting against wearing his mask when he came to work.

Certainly there were some hot potatoes, such as a bill that requires overtime pay be paid to migrant farm workers, but most policy proposals came up short as the clock ran out within 32 days. To be sure, it was budget that took the front seat this session. Unprecedented levels of funding were doled out once more, making the biennium one of the most richly funded in history - if not the most. In the past two years billions of dollars have been spread around the state like butter on toast. \$2 million for a bridge over here, \$4 million for building temporary housing facilities over there, ... investment funds, grant funds, agency staffing increases, inflation, taxes, the kicker !!!!!

What will become of these new programs and positions in the long run? Oregonians may not know until it is happening, but Republicans will tell you that simple math indicates that it is not going to end well. The 2023 Legislative Session will certainly not see the infusion of federal dollars as before, yet that same influx created more items to spend money on - the presiding officers are going to have to scour the couch for nickels and dimes to maintain expectations.

The math the Republicans really hope will not end well for the Democrats is out at the doors this election cycle. They hope that this election cycle will be the inflection point. They just might be right as nearly half of the legislative seats will have a new incumbent and new district lines favor their party. Whether it is due to retirements, redistricting or a renewed interest in creating a political “middle,” dozens upon dozens of new people are running for the state legislature.

May 17th is the Primary Election, when the bulk of the open seats will be determined. Voters’ guides and ballots will be mailed out shortly - so keep your eye on the mailbox.

OOJLC LEGISLATIVE PRIORITIES

Even though it was a short session of just less than five weeks, a number of significant health care policies were considered during the 2022 legislative session. As in the 2021 session, COVID precautions and the virtual process made direct advocacy more challenging for everyone but the voice of pharmacy was heard!

For the past ten 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.

Some of the more significant legislation that OOJLC played an active role in during the 2022 Legislative Session included:

CAT Tax Relief

SB 1524B exempts from commercial activity subject to the Corporate Activity Tax (CAT) receipts from the sale of prescription drugs for pharmacies with nine or fewer stores. This exemption applies for the tax years beginning January 1, 2022, and before January 1, 2026.

While OOJLC initially supported legislation introduced in both the House and the Senate to exempt all retail prescription drug sales from being subject to the CAT, it became clear that the House and Senate leadership were not going to allow those bills to be considered. There was significant opposition from the proponents of the “Students for Success” program which is funded by the CAT revenues. Those stakeholders argued that exempting prescription drugs would create a “slippery slope” leading to the approval of other exemptions from the CAT which would result in the significant erosion of revenues for the schools.

Fortunately, OOJLC had initiated a grassroots effort last summer and fall to help inform policy makers on the precarious position of pharmacies in Oregon including the impact of the CAT which had already been cited as a key driver in the decision for Bi-Mart to discontinue pharmacy operations in Oregon and in the closure of an independently-owned community pharmacy. For Oregon pharmacies, who were getting crushed under the weight of the COVID pandemic without ability to attract...let alone afford more staff...this had become a burden to great to bear. We also pointed out that it threatens patient safety issues as pharmacy closures and limited staffing and operations in pharmacies across the state had led to customer backlogs and patients missing their prescribed medications.

Unlike other businesses, the price paid by the consumer is determined by a pharmacy benefit manager (PBM) or other third-party payer, not by the pharmacy itself. All PBM and third-party payers require that pharmacies charge consumers the amount outlined in the contracts (i.e., deductible, copayment, coinsurance), and explicitly prohibit additional amounts to be passed onto the consumer. As a result, while drug wholesalers and manufacturers can pass along the impact of this tax to the pharmacy by increasing the cost of goods, the pharmacy is unable to pass along any of the cost tax burden to the consumer. Pharmacies are being double-taxed as they have to pay the taxes of the drug suppliers and again pay the at tax when they sell the drugs. This is an unfair tax burden to community pharmacies.

By the time the 2022 session was convened in February, a number of legislators from both parties were convinced that something had to be done to help mitigate the costs of the CAT. House and Senate Finance and Revenue Committee chairs Sen. Lee Beyer (D-Springfield) and Rep. Nancy Nathanson (D-Eugene) crafted an amendment to SB 1524B to provide relief for the independent and small regional pharmacies by exempting the revenues derived from the sale of prescription drugs from the CAT. By limiting the prescription sales exempted, the provision minimized the loss of CAT revenues and yet recognized the vulnerability of our independent and smaller regional pharmacies. The measure was approved by significant majorities in both chambers and has been signed into law by the governor.

PBM Reforms

Due to the limited length of the short session, OOJLC decided to focus on two major PBM reform objectives.

The first was to require that all contracts between PBMs and pharmacies must comply with the statutory requirements of pharmacy benefit managers. Prior loopholes allowed them to “auto-renew” or have “evergreen” contracts and escape the Department of Consumer and Business Services’ scrutiny. The Senate Health Care Committee included language in **SB 1529** to address this issue. *The provision applies HB 2185 and other existing requirements for contracts between pharmacies and PBMs to all contracts entered into, renewed, or extended on or after January 1, 2021, and contracts automatically renewed on or after January 1, 2023.*

The second goal was to authorize the Secretary of State to audit the practices and drug pricing mechanics of PBMs that contract with state agencies and report the findings to the Legislature. The audits have resulted in tax dollar savings in a half-dozen states that have conducted them as well as public policy changes in prescription drug reimbursements by PBMs. HB 4132 contained the requirement that the Division of Audits of the Secretary of State conduct the audit and report to the Legislature by September 15, 2023.

While educating legislators on the value of these audits, we also provided the Secretary of State’s Audit Division with information from other state audits and the potential for cost savings in Oregon. In the second week of the session, the Secretary of State announced that the PBM audit would be included along with seven other audits in the 2022 annual audit process conducted by the Audits Division. This eliminated the need for the provision in HB 4132 and should allow the audit to be completed before the September 15, 2023 deadline so that the information can be considered by the Legislature in the 2023 session.

Pharmacy Workplace and Workforce Modifications

OOJCL worked with the House Health Care Committee on successfully addressing some pharmacy workplace and workforce issues in **HB 4034**, an omnibus health care bill. pharmacies struggling with workload and workforce issues.

- **Technician Verification Certification Program**
Due to conflicting language in statute, the Oregon Board of Pharmacy rescinded rules allowing expanded pharmacy technician duties for certain non-clinical tasks in 2021. An expanded technician scope is a national trend, well established to be safe and effective, and supported by most pharmacy professional societies. Addressing several areas of Oregon statute that unintentionally restricted this innovative practice will allow pharmacists to use their professional judgment as providers to better serve the public in partnership with their pharmacy technicians. As approved in HB 4034, the program allows a pharmacist to delegate to a pharmacy technician the final verification of the prescribed drug and drug dosage, device or product.

- Telepharmacy Clarification
The bill clarifies the permitted use of telepharmacy by pharmacists, pharmacy technicians and interns. And, it prohibits the Board of Pharmacy from adopting standards for telepharmacy that are more restrictive than in-person pharmacy services.
- Pseudoephedrine Fixes to 2021 Legislation
The measure allows a pharmacy intern to transfer a drug containing pseudoephedrine or ephedrine to persons of 18 years of age or older without a prescription. It also allows a pharmacy to swipe a driver's license or identification card to submit the information to the electronic system for the purpose of transferring a drug containing pseudoephedrine.

Naloxone Mandate

As important as it is to secure the passage of legislation, sometimes it is equally important to defeat damaging legislation or legislation with adverse consequences. As was the case with **HB 4081** which would have created an unnecessary mandate with serious unintended consequences. The bill would have required pharmacists who dispense opioid prescriptions to offer prescriptions to the patients for naloxone. OOJLC opposed this unprecedented mandate on the practice of pharmacy. While opioid related patient harm is a serious issue, Oregon pharmacists can already counsel and prescribe naloxone when clinically appropriate, and regularly do so. A legislative mandate of a clinical conversation within a pharmacist professional scope is unprecedented, and Oregon would be only the second state in the nation to do so.

HB 4081 would have mandated actions by pharmacists to a very large number of patients, many of whom do not truly need naloxone or would be unable to afford it anyway. OOJLC calculated that passage of the bill would cost the Oregon Health Plan over \$15 million to implement just in consultation fees. Mandating that all patients receiving benzodiazepines receive naloxone counseling would utilize precious time offering naloxone to patients receiving these medications for other reasons, who are receiving small, acute prescriptions for opioid pain medications. Stepping in to legislate clinical judgement during an already overburdened and understaffed crisis, does not address the true barrier, which is the cost of naloxone. List price of naloxone is over \$500, and insurance coverage is inconsistent. Copays often exceed \$50, causing half of the patients to decline.

The bill was championed by House Health Care Committee Chair Rep. Rachel Prusak who was able to get it passed out of committee. However, because of the fiscal impact, it was sent to Ways and Means and never saw the light of day.

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