

Session may be short but has lots of spark

By Bill Cross & Niki Terzieff, OSHP's Government Affairs Advocates

A little over half-way through the 2018 legislative session and legislators, staff, lobbyists and state agency officials are all complaining about the intensity of the “short” session. The “short” session is conducted in the even-numbered years and is limited to 35 days. Approved by the voters in 2011, the constitutional amendment authorized the Legislature to meet annually. The intent was to use the short session to address budget issues, technical fixes to measures approved the session before and to consider any emergency issues.

Apparently there have been a lot of emergencies as that intent has been ignored the last several “short” sessions. In particular, the House Democratic leadership has embraced very aggressive agendas. This year, the House Democrats are pushing for health care, gun control, tax reform, net neutrality, carbon cap and trade and class size legislation. In most cases, these issues are very partisan and the tension in the Capitol is palpable.

Deadlines arrived about every ten days – making one week of work the equivalent of a month during the long session. The most recent deadline brought good news: bills that haven't yet received committee approval are no longer in play...at least for this session. The only guarantee in this process is that legislators and the interests they impact will persist.

OSPA, OSHP, the Pharmacy Coalition and your lobbying team have had a very robust session as well. At our request, HB 4103 was pre-session filed to address the serious issues of patient care, choice and access resulting from the current practice of PBMs mandating that prescriptions must be filled by their mail order “pharmacies.” The bill would have also prevented PBMs from requiring a pharmacy or pharmacist from meeting credentialing requirements designed to restrict access to higher-price drugs.

Additionally, we proposed amendments to HB 4103 to address the unregulated MAC pricing and auditing practices. As you may recall, HB 2123 has never been fully implemented. After several legislative efforts to provide the Department of Consumer and Business Services the enforcement powers, the Legislature approved HB 2338 in 2017. It provided DCBS with oversight and enforcement tools to help ensure compliance.

Sadly, critical provisions in the rule drafted by DCBS to go into effect January 1, 2018, were not adopted. The provisions included critical definitions for implementation of HB 2123 and the process for appealing a MAC pricing reimbursement. Needless to say, these provisions were strongly opposed by the PBMs. While the DCBS hearing officer reported that these provisions were clearly within the Agency's statutory authority and consistent with the legislative intent, they were not adopted. Those provisions were the substance of the proposed amendments to HB 4103.

You can find rules and opposition statements at this link:

<http://dfr.oregon.gov/community/committees-workgroups/Pages/2017-pbm-committee.aspx>

We recommend that you file MAC pricing and audit practice complaints as appropriate because we are interested in how DCBS will respond. Please keep us informed as this information may prove useful next session when we will likely have an opportunity to readdress this issue.

Meanwhile, House Health Care Committee Chair Mitch Greenlick announced at the last work session for house bills in the Health Care Committee that Rep. Teresa Alonso Leon had made good progress with the various parties interested in HB 4103 but that there was not enough time to resolve everything in the short session with these tight deadlines. He has asked Rep. Alonso Leon to chair a work group in the interim on this issue to develop legislation for the 2019 session.

So, we took another bite out of the elephant and each time we do, we realize how enormous and pervasive it is. In addition to the effort on the House side, Sen. Elizabeth Steiner Hayward has her work group going on the other side of the building. It is addressing various PBM concerns, high drug costs and patient access issues. Stay tuned!

OSPA and OSHP have been involved in the Oregonians for Affordable Drug Prices Now Coalition which has been advocating for HB 4005. The measure establishes the Prescription Drug Price Transparency Act, requiring manufacturers of prescription drugs sold in Oregon to report specified information to the Department of Consumer and Business Services. The bill also requires insurers to include specified information regarding reimbursement of certain drugs along with current filing of health insurance rates. In addition, the bill creates the Task Force on the Fair Pricing of Prescription Drugs charged with developing a strategy to create transparency for drug prices across the supply chain, including pharmacy benefit managers, distributors, as well as wholesale and retail pharmacies.

HB 4005 was passed out of House Health Care Committee earlier in February to the Ways and Means Joint Committee. DCBS projects the cost of complying with the provisions of this bill to be \$425,022 a year. Funding for this program will be derived from fees to be paid to DCBS by manufacturers. Such fees will be set via rulemaking and are yet to be determined. The bill was approved by the Joint Ways and Means Committee and is headed to both the House and the Senate for floor votes. We anticipate that Governor Brown will sign this into law.

Another bill that we have been supporting is HB 4143, the Governor's bill on the opioids epidemic. HB 4143 establishes a pilot project to determine the effectiveness of immediate access to evidence-based treatment for persons who overdose on opioids. This includes using peer recovery support mentors to facilitate the link between the emergency department and appropriate treatment and resources. The bill includes a General Fund appropriation of \$2,000,000. Most of this will support grants or contracts to four counties to support pilot program activities, but \$200,000 will pay for one position to oversee the pilot program, as well as an external evaluation of the pilot project.

The bill also requires practitioners to register with the prescription monitoring system by July 1, 2018, and requires the Department of Consumer and Business Services to study barriers to effective treatment for substance use disorders that are a result of current structures of payment.

The bill was approved by the House Health Care Committee and sent to Ways and Means which has scheduled a Human Services Subcommittee meeting and work session. We anticipate that this bill will come out of the budget committee and find its way to the Governor's desk.

We have also been following House Joint Resolution 203, the "HOPE Amendment." The resolution would guarantee health care as a right under the state's constitution if the voters approve it. A longtime goal of Rep. Mitch Greenlick, the House approved referring the issue to the voters on a party line vote of 35 to 25. Proponents believe that without a health care right, many people suffer as timely access to proper care is denied or delayed." Opponents argue the amendment would be costly and open up the state to constitutional lawsuits. The bill is now in the Senate.

Please feel free to contact us at any time if you have any questions by emailing Bill Cross at bill@wvcross.com or Niki Terzieff at niki@leadingedgepublicaffairs.com.