



Department of Consumer
and Business Services

Hearing Officer's Report to Agency on Rulemaking Hearing

Date: 11/5/2022

To: Department of Consumer and Business Services

From: Policy Analyst: Cortnee Whitlock
Hearing Officer: Cassie Soucy

Subject: PDAB Rulemaking Public Hearing

Hearing Date: October 25, 2022

Hearing Location: Labor and Industries Building
Hybrid meeting conducted in person at Labor and
Industries Building and virtually on Microsoft
Teams

Comment Period End: November 1, 2022

Background

The Prescription Drug Affordability Board (PDAB) was enacted under Senate Bill 844 (2021) within the Department of Consumer and Business Services (DCBS). The bill's purpose is to protect consumers and other entities from the high cost of prescription drugs. The law provides authority for the PDAB to adopt rules necessary for the board's administration (ORS 646A.693(18)).

The Administrative Procedures Act requires state agencies and boards to adopt rules related to the procedure. The Attorney General's Office has provided model rules for agencies and boards to utilize for creating the process to engage in these crucial functions (ORS 183.341). The Attorney General's Office recommends that all agencies and boards adopt the model rules for procedure around rulemaking to comply with the Administrative Procedures Act.

On June 23, 2022, the first rulemaking action that the PDAB conducted was to approve temporary rules that adopt the model rules for rulemaking and public records requests:

1. OAR 925-100-0001 provides a legal framework for the PDAB to engage in rulemaking as authorized by SB 844 (2021), consistent with authorities granted under ORS 183.341.
2. OAR 925-100-0002 defines requirements for notification of rulemaking by the PDAB.
3. OAR 925-100-0003 adopts Oregon's Public Records Law (ORS 192) requirements into PDAB rules.

A rules advisory committee met on August 25, 2022, comprised of stakeholders from drug manufacturers, insurers, and PBMs.

Hearing and Public Comments

No public comment was provided at the PDAB rulemaking public hearing.

One written comment was received from PhRMA on October 19th, expressing concerns around ensuring confidentiality protections. The specific concerns outlined were regarding records that may “be exempt from disclosure”. PhRMA states that the proposed rule does not acknowledge, “...the Board’s confidentiality obligations under ORS 646.694(7)” and was concerned that this may be interpreted to allow disclosure.

Discussion

All three proposed rules are model rules from the Oregon Attorney General to comply with Oregon’s Administrative Procedures Act. Within ORS 646.694(7), the statute identifies Oregon’s Public Records Law, ORS 192.345, as part of the evaluation to determine if the information is confidential, proprietary, or a trade secret. The proposed rules make clear the administrative aspects of a public records request as required by Oregon’s Public Records Law such as submission of a public records request, fees paid for the public records, and waiver of fees in certain circumstances. PDAB and DCBS do not have the authority change the regulatory statutes, ORS 646.694(7) and ORS 192.345, used to evaluate information claimed to be confidential, proprietary, or trade secret.

Recommendation

After reviewing the proposed rule and the public comment received, the hearing officer recommends the rules be adopted as proposed.

____Cassie Soucy /s/_____
Senior Policy Advisor
Hearing Officer

Cortnee Whitlock
PDAB Policy Advisor
Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 23 day of November, 2022.

Department of Consumer and Business Services



Andrew R. Stolfi

Insurance Commissioner and Director
Department of Consumer and Business Services