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December 30, 2019

VIA ELECTRONIC MAIL

Jesse O'Brien  
Senior Policy Advisor & Legislative Liaison  
Oregon Department of Consumer & Business Services  
Division of Financial Regulation  
Salem, Oregon

**RE: HB 2185 rulemaking**

Dear Mr. O'Brien,

Thank you for the opportunity to provide comments regarding the HB 2185 Second Discussion draft. Providence Health Plan (PHP) offers the following recommendations:

**OAR 836-200-0440 Market Conduct for Pharmacy Benefit Managers**

***Delivery of prescription drugs as an Ancillary Service***

**Recommendation:** Clarify that pharmacy benefit managers are not required to reimburse network pharmacies for the delivery of prescription drugs unless the fee is specified in the contract. Clarify that pharmacy benefit managers are not required to reimburse network pharmacies for certain benefits (90-Day supply) unless specified in contract.

- *PBM not required to reimburse pharmacy delivery fee unless the fee is specified in contract*

PHP seeks to amend the language in (1) of the discussion draft to clarify that pharmacy benefit managers are not required to reimburse network pharmacies for delivery of prescription drugs unless the fee is specified in the contract between the pharmacy benefit manager and the network pharmacy. This change promotes affordability by ensuring that delivery fees are reasonable and accounted for. It also aligns with the statutory language in HB 2185.

- *PBM not required to reimburse network pharmacies for certain benefits unless specified in contract*

PHP requests to amend the language in (1) of the discussion draft to clarify that certain health plan benefits, such as a 90-Day Supply pharmacy benefit, are available at a network pharmacy only if specified in the contract between the pharmacy benefit manager and the network pharmacy. PHP requests this change to ensure that health plans are able to continue offering high value prescription services for consumers. This change also ensures that consumers who choose to have their prescription drugs delivered to them by a network pharmacy are not confused as to which benefit applies.

I have included a redline of our recommended changes to the discussion draft below:

(1) A pharmacy benefit manager shall allow a network pharmacy to mail, ship or deliver prescription drugs to its patients as an ancillary service. A network pharmacy may not provide or hold itself out as able to provide certain health benefit plan benefits such as 90-Day Supply unless specified in the contract between a pharmacy benefit manager and network pharmacy. A contract between a pharmacy benefit manager and a pharmacy may establish limits and parameters on a pharmacy's mail, shipment and delivery of prescription drugs to enrollees, but these limits may not have the effect of preventing enrollees from accessing prescription drugs through a network pharmacy via mail, shipment and delivery on the request of the enrollee. Pharmacy benefit managers are not required to reimburse a delivery fee charged by a network pharmacy unless the fee is specified in the contract between the pharmacy benefit manager and network pharmacy.

### ***Definition of Specialty Drugs***

Recommendation: Remove definition of specialty drugs. In the alternative, amend the definition of specialty drug to address all components of the statutory definition.

The definition of "specialty drug" included in HB 2185 is intended to align with federal definitions and requirements applicable to specialty drugs as laid out in the ACA.<sup>1</sup> PHP is concerned that the definition of specialty drugs included in (3) of the discussion draft is narrower than the definition included in statute and creates conflict between the two definitions. For this reason, we recommend removing the definition from the rule. In the alternative, we recommend revising the discussion draft definition to include the elements present in the statutory language but not present in the discussion draft, namely provider coordination and patient education.

I have included a redline of our recommended changes to the discussion draft below:

(3) For the purposes of subsection (2) of this section, a prescription drug may be shown to meet the definition of "specialty drug" under 2019 Or Law ch 526 Section 4, if, to be properly dispensed according to standard industry practice, the drug:

- a. Requires difficult or unusual preparation, handling, storage, inventory, reporting or distribution;

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<sup>1</sup> 45 CFR 156.122

- or
- b. Is associated with difficult or unusual data collection or administrative requirements;
  - c. Requires a pharmacist to provide coordination that involves collaboration with patients, physicians, specialists, and other members of the healthcare team to manage adherence, identify side effects, track monitoring parameters such as labs, assess response to therapy, and document outcomes ~~manage the patient's use of the drug by monitoring or providing disease or therapeutic support systems~~
  - d. Requires a pharmacist to provide in depth patient education that includes monitoring or providing disease or therapeutic support systems

***Generally available for purchase***

Recommendation: Remove sections (6) and (7).

PHP requests to amend the discussion draft language by removing sections (6) and (7). We are concerned that the draft definition of “substantial quantities that are inconsistent with the business needs of a pharmacy” does not appropriately balance the interests of pharmacies with mechanisms that promote cost containment. Furthermore, the discussion draft language in (6) and (7) requires each pharmacy to be evaluated based on its own dispensing history and business needs. This type of case-by-case analysis would make it extremely difficult for pharmacy benefit managers to create and manage MAC lists and will result in increased drug costs for consumers. If the rules advisory committee feels it is necessary to further define this term, we believe a factor-based test would be more appropriate.

Thank you for the consideration of PHP's comments. Please contact Megan Lane, Manager Government Affairs at 503-574-5891 or [Megan.Lane@providence.org](mailto:Megan.Lane@providence.org) if you require additional clarification on a specific issue or would like to discuss the content of this letter.