



December 30, 2019

Mr. Jesse O'Brien
Senior Policy Advisor
Oregon Department of Consumer & Business Services
Division of Financial Regulation
350 Winter St. NW, 2nd Floor
Salem, OR 97301

Re: Comments of DCBS Second Discussion Draft – HB 2185 Rule Text

Dear Mr. O'Brien,

On behalf of the Oregon Pharmacy Coalition, I am submitting the below comments on the discussion draft.

Second Discussion Draft – HB 2185 Rule Text

836-200-0440 Market Conduct Requirements for Pharmacy Benefit Managers

- (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 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.

Coalition comment: We agree with language as written. We would not agree to deleting the final statement. This is about patient access to use their own local pharmacy and receive medication the way that is most convenient to them. Whereas HB 2185 did not intend this provision to apply to a predominantly mail-order pharmacy, it did intend to allow patients the ability to access mail order services from their own local pharmacy without restriction.

- (2) Except as provided in subsection (5) of this section, a pharmacy benefit manager may require a prescription for a specialty drug to be filled or refilled at a specialty pharmacy as a condition for the reimbursement of the cost a drug.

Coalition comment: As before, we agree with this rule provided we can agree on the definition of specialty drug.

- (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 Laws 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, or distribution;
 - b. Is associated with difficult or unusual data collection or administrative requirements;
 - c. Requires a pharmacist to manage the patient’s use of the drug by monitoring or providing disease or therapeutic support systems.

Coalition comment: We believe this language can be improved on to more clearly not apply to drugs like insulin. This language can be interpreted as inclusive of drugs which are not specialty drugs. Discussions of better definitions are going on locally and nationally right now and we request deferring a decision on this language until after the 2020 Oregon legislative session concludes.

- (4) For the purposes of subsection (2) of this section, a pharmacy may demonstrate that it meets the definition of “specialty pharmacy” under 2019 Or Laws ch 526 Section 4 by showing that
- a. Its business is primarily providing specialty drugs and specialized, disease-specific clinical care and services for people with serious or chronic health conditions requiring complex medication therapies; or
 - b. It has been validated for meeting quality, safety and accountability standards for specialty pharmacy practice through accreditation in specialty pharmacy by a nationally recognized, independent accreditation organization.

Coalition comment: We agree with current language. We do not support changing the word “or” to “and” to require pharmacies meet both criteria. Specialty pharmacies must operate as specialty pharmacies for at least a year or two before they can become accredited. Law applying to specialty pharmacies should also apply to pharmacies who are not accredited but are performing the same activities as an accredited pharmacy.

- (5) A pharmacy benefit manager shall reimburse the cost of a specialty drug that is filled or refilled at a network pharmacy that is a long term care pharmacy, provided that the specialty drug is dispensed to an enrollee who is a resident of a long term care facility served by the long term care pharmacy.

Coalition comment: We agree with the rule change as written.

- (6) A pharmacy benefit manager may not place a prescription drug on a maximum allowable cost list unless it is generally available for purchase in Oregon as defined by 2019 Or Laws ch 526 Section 4. A prescription drug is not generally available for purchase at a specified price if it is

only available at that price if purchased in substantial quantities that are inconsistent with the business needs of a pharmacy. For the purposes of this subsection, “substantial quantities that are inconsistent with the business needs of a pharmacy” means quantities in excess of a typical 3-month supply of a drug for a pharmacy based on the pharmacy’s dispensing history.

Coalition comment: We agree with language with addition of section (7).

- (7) If a network pharmacy appeals its reimbursement for a drug subject to maximum allowable cost pricing on the basis that the drug is only available at the specified price if purchased in substantial quantities inconsistent with its business needs, and provides the pharmacy benefit manager with evidence sufficient to establish its business needs as defined by subsection (6), the pharmacy benefit manager must uphold the appeal. A pharmacy benefit manager’s compliance with this subsection is sufficient to demonstrate compliance with subsection (6) and 2019 Or Laws ch 526 Section 4 (1)(a)(B)(iii).

Coalition comment: We agree with this addition. This is primarily an issue for the appeals process.

- (8) If a prescription drug subject to a specified maximum allowable cost is available at that price if purchased in quantities that are consistent with the business needs of some pharmacies but inconsistent with the business needs of others, nothing in subsection (6) or (7) shall be construed to prohibit a pharmacy benefit manager from applying the maximum allowable cost to pharmacies that can purchase the drug in the necessary quantities consistent with their business needs.

Coalition comment: We agree with this rule.

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