



November 12, 2024

Dear Ms. Rehfield-Griffith,

Thank you for the opportunity to provide comment on the draft rules for House Bill 4149. While much of our concerns were addressed during the RAC meeting on Oct. 30, we would like to highlight some outstanding items.

- Subsection 4, lines 126 – 129 require reporting of dispensing fees as a data validator for spread pricing reports. The difference (or “spread”) between the total payment from health plan to PBM and what PBMs pay to pharmacies is what HB 4149 intends to create transparency around; though Regence is not opposed to the required reporting of dispensing fees, only disclosing dispensing fees (as currently written in the draft rules) will not accurately represent or validate spread pricing data. Dispensing fees are wrapped into what health plans pay PBMs for their pharmacy benefit management services and represent only part of total payment. While this language is in HB 4149, as was voiced during the Oct. 30 RAC meeting, we do not believe that the language as written in rule serves the legislative intent and will not actually provide the data validation that the rule is seeking.
- Subsection 7, line 234 strikes language from prior rule stating “from a pharmacy benefit manager”; we request that this language is restored to ensure that the rule is sufficiently clear that the appeals referred to here are between a pharmacy and the PBM, not an appeal of a pharmacy to DCBS.
- In Subsection 7(c), we support the language as written; if the rule is re-written to include more than the appealing pharmacy as the recipient of the post-appeal rate, we request that it only be applicable to “similarly situated” pharmacies.
- We request that Subsection 8 include all exemptions from the prohibition of post-adjudication denials or reductions of claims from HB 4149 in rule, specifically to include:
  - Services improperly rendered by the pharmacy in violation of state or federal law.
  - Adjustments that occur resulting from an audit.
- In Subsection 10, we request that the language already existing in statute that excludes specialty prescriptions from this requirement be added here to support consistent implementation. The HB 4149 language we would like to see included is as follows:
  - “Except as provided in paragraph (c) of ORS 735.536, 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 of the drug.”

- In Subsection 11(f), we support including additional clarifying language regarding what activities are considered “penalizing” and what are normal in the due course of business between a PBM and a pharmacy. We support the suggested use of “similarly situated” pharmacy in this language, to ensure that when PBM actions are evaluated for potential retaliation, it is a comparison of actions between comparable entities.
- Also in Subsection 11(f), we share concerns expressed during the Oct. 30 meeting about the explicit inclusion of “conducting an audit of a pharmacy” in the list of penalizing actions and request that it be removed from the draft rules. While we understand this is a concern voiced by stakeholders in other forums and may be considered an acceptable inclusion under the “otherwise retaliate” language in HB 4149, it is not listed explicitly in the bill text. We appreciate that this rulemaking process has been clearly and narrowly focused on implementing the text as well as the intent of HB 4149 and prior PBM legislation. As such, we would like to see similar adherence here.

Again, we are grateful for the opportunity to participate in this rulemaking advisory committee and to provide comment on the draft rule. Thank you so much for your consideration of our feedback. We are available to answer any questions.

Sincerely,

Marris Alden, LMSW  
Public Policy Specialist  
Regence BlueCross BlueShield of Oregon  
Email: [marris.alden@cambiahealth.com](mailto:marris.alden@cambiahealth.com)