



December 6, 2024

Dear Ms. Rehfield-Griffith,

Thank you for the opportunity to provide comment on the revised draft rules for HB 4149. We appreciate your work to address many of our prior items of feedback in the revised draft rules. There are some outstanding and new elements that we write to comment on today:

- We appreciate the effort by DCBS to ameliorate the misalignment between the statutory language in HB 4149 and the legislative intent for “dispensing fees” to serve as a data qualifier for spread pricing. The definition of “dispensing fee” in Subsection 5 (lines 92-94 of the 10/30 redline draft), however, remains too broad, fails to identify a payee or a payer, and risks redundant reporting of administrative fees as defined in ORS 735.537(a) due to its broadness.
 - We believe the following definition is broad enough to provide a valuable reporting metric but narrow enough to avoid redundancy within the data set:
 - “For the purposes of this rule, ‘dispensing fee’ means an amount paid to dispense prescription drugs to the health plan enrollees, not to include administrative fees as defined in ORS 735.537(a).”
- In what is now Subsection 9, we appreciate the addition of “Services improperly rendered by the pharmacy in violation of state or federal law” (line 270) in the list of exemptions from the prohibition of post-adjudication denials or reductions of claims, as written in HB 4149. However, we did not see “adjustments that occur resulting from an audit” added, though that is also in the statutory language. We request that this be added to the final rule to maintain alignment with statute.
- In Subsection 11(f) (line 288) we continue to be concerned about the inclusion of “conducting an audit of a pharmacy” in the list of penalizing actions that a pharmacy benefit manager (PBM) may take against a pharmacy. 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.

- Alternatively, if the audit language is retained, we recommended the addition of the following subsection:
 - “(12) Subsections (9) and (11) may not be construed to limit a pharmacy claim audit under ORS 735.540 to 735.552.”
- We do want to acknowledge that new language introduced in the most recent draft that adds the qualifying language of “conducting an [unnecessary or unwarranted] audit of a pharmacy”. If this language is carried forward into final rule, we would recommend more specific qualifiers such as “unscheduled” or “outside the due course of business” be utilized.

Finally, we are grateful for the extended conversation had at the prior rulemaking convening about the exemption of specialty drugs from Subsection 7 (lines 216-217), which prohibits PBMs from requiring prescriptions to be filled by a mail order pharmacy to be reimbursed. This exemption is in statute and is aligned with legislative intent. However, we request that lines 177-179 be revised to maintain the exemption regardless of whether the specialty drug is filled is a traditional specialty pharmacy or a mail order specialty pharmacy. As discussed during the meeting, the vast majority of specialty pharmacies are mail order pharmacies. If this exemption is not made explicit in rule, we have concern about impacts on member access to and affordability of specialty drugs. We look forward to reviewing the re-drafted language ahead of the upcoming meeting.

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