

October 17, 2018

Jesse O'Brien
Senior Policy Analyst
Oregon Department of Consumer and Business Services
Division of Financial Regulation
350 Winter Street NE
Salem, Oregon 97309

Re: September 24, 2018 Version of Preliminary Draft HB 4005 Rules

Dear Jesse:

Thank you for the opportunity to represent the Pharmacy Benefit Manager (PBM) industry on the Oregon House Bill 4005 (HB4005) Rules Advisory Committee. As the designated representative for the Pharmaceutical Care Management Association (PCMA), which is the national association representing America's PBMs, we submit this letter to address a request for comments to the Preliminary Draft House Bill 4005 Rules made available on September 24, 2018.

PBMs administer prescription drug benefits for more than 266 million Americans who have health insurance from a variety of sponsors including commercial health plans, self-insured employer plans, union plans, Medicare Part D plans, state government employee plans, managed Medicaid plans, and others. PBMs utilize proven tools to lower prescription drug costs and increase access to these medicines.

This letter addresses proposed rule language for Oregon 836-053-0473 Required Materials for Rate Filing for Individual or Small Employer Health Benefit Plans, item (I) which currently reads:

(I) Information regarding prescription drug costs included as an appendix to the filing and labeled "Appendix III: Prescription Drug Costs." This document must include, for drugs reimbursed by the insurer under policies or certificates issued in this state:

- (A) The 25 most frequently prescribed drugs;
- (B) The 25 most costly drugs. In determining this list, the insurer must consider total annual spending, including the net impact of any rebates or other price concessions if applicable;
- (C) The 25 drugs that have caused the greatest increase in total plan spending from one year to the next. In determining this list, the insurer must consider the net impact

on total plan spending of any rebates or other price concessions if applicable;
(D) The impact of the costs of prescription drugs on premium rates, on a per member, per month basis, including the net impact of any rebates or other price concessions if applicable.

On behalf of PCMA, we respectfully request the committee's consideration of the following rule language:

(I) Information regarding prescription drug costs included as an appendix to the filing and labeled "Appendix III: Prescription Drug Costs." This document must include, for drugs reimbursed by the insurer under policies or certificates issued in this state:

- (A) The 25 most frequently prescribed drugs;
- (B) The 25 most costly drugs as a portion of total annual spending;
- (C) The 25 drugs that have caused the greatest increase in total plan spending from one year to the next; and
- (D) The impact of the costs of prescription drugs on premium rates.

The rationale for these requested changes include the following:

1. Our requested changes bring the proposed rule language back in line with the language that was enacted by the legislature in Oregon House Bill 4005. The proposed rule language addressing net impact of any rebates or other price concessions should not be included because it goes beyond what the legislature intended and the plain language of the authorizing statute (HB 4005). Therefore, it exceeds the authority granted to Department of Consumer and Business Services (DCBS) by the Oregon legislature in House Bill 4005.
2. The stated intent of Oregon House Bill 4005 is related to the cost and pricing of prescription drugs. The list price of prescription drugs is set by drug manufacturers alone. Health plans and PBMs do not have any control over the price a manufacturer sets for a drug. Rebates or discounts negotiated by PBMs have no effect on the list price manufacturers set for their medicines.
3. Within the description of HB 4005, the legislative assembly stated it intends by this Act to permit PBMs to negotiate discounts and rebates for prescription drugs consistent with existing state and federal law. There is concern that requiring the disclosure of such information beyond what the enacting legislation calls for could have the unintended consequence of interfering with a PBMs ability to negotiate discounts from manufacturers.

4. It should be noted that according to a recent study, there is no correlation between the prices drug manufacturers set and the rebates they negotiate with PBMs.¹ The findings contradict claims asserted by manufacturers and others, that the prices that drug manufacturers set are contingent on the level of rebates and discounts manufacturers negotiate with PBMs. Ultimately, the public disclosure of private PBM contract terms, such as rebates, would undercut a PBM's ability to negotiate effectively with drug manufacturers.
5. Our requested language for the proposed rule ensures that it follows the aims of the enacted law while protecting consumers in Oregon from increasing drug costs.

We respectfully request the rule language remain consistent with the language in HB 4005 and the authority granted to DCBS by the Oregon legislature.

Thank you for the opportunity to submit these comments. We look forward to working with DCBS throughout the Rules Advisory Committee process.

Sincerely,



LuGina Mendez-Harper, PharmD, RPh
Government Affairs Principal
Prime Therapeutics

¹ PCMA, Visante, *Revisiting Drug Prices, Rebates, and PBMs* August 2018; See also: PCMA, Visante, *Increasing Prices Set by Drugmakers Not Correlated With Rebates*, June 2017; PCMA, Visante, *No Correlation Between Increasing Drug Prices and Manufacturer Rebates in Major Drug Categories*, April 2017.