

November 1, 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: Second Draft of House Bill 4005 Rules

Dear Jesse:

The Pharmacy Benefit Manager (PBM) industry appreciates the opportunity to participate in the Oregon House Bill 4005 (HB4005) Rules Advisory Committee. As a representative of the Pharmaceutical Care Management Association (PCMA), the national association representing America's PBMs, this letter is being submitted in response to the Second Draft of House Bill 4005 Rules discussed at the October 22, 2018 meeting.

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). We have consistently requested the rule language be aligned with the legislation passed earlier this year. The suggested edits are as follows:

(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; ~~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; and. ~~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.~~

Rationale for these requested changes are:

1. These 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 second draft 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. The Oregon HB4005 Task Force legislative report referenced insurer reporting as detailed in HB4005. The Task Force did not adjust the insurer reporting requirements to contemplate rebates or other price concessions.
5. 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.ⁱ 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.
6. 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.

Additionally, we felt it was important to address feedback provided during the October 22 RAC meeting.

1. We reiterate the request to not include rebates or other price concessions when determining insurer reporting required by HB4005. We disagree with the recommendation to utilize the term “direct and indirect remuneration” (DIR) to clarify rebates and other price concessions. DIR is a federal construct of the Centers for Medicare & Medicaid Services (CMS) for Medicare Part D plans. DIR is not an element of commercial health plans. DIR is data collected by CMS to determine the final cost of medicines and CMS is currently evaluating and may change the DIR construct as part of their Annual Medicare Part D review process.
2. We disagree with the suggestion to include both outpatient and inpatient prescription drug costs in HB4005 insurer reporting. The cost analysis required for insurer reporting will be less clear if inpatient medications are included. The prices of inpatient medicines are managed much differently than medicines dispensed in outpatient settings where patients have out-of-pocket medicine cost sharing expenses at the point of sale. Patients have limited exposure to inpatient drug costs due to medical benefit billing mechanisms in which inpatient services and medicine costs are bundled together. Finally, prescription drug benefits do not cover prescriber-administered or inpatient medicines; those drugs are billed for under the medical benefit.

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.