

November 21, 2018

**To:** 2018 HB 4005 Rulemaking Advisory Committee  
Mr. Jesse Ellis O'Brien  
2018 HB 4005 RAC Members  
*Sent by Email to: Jesse.E.O'Brien@Oregon.gov*

**From:** Robert Judge, Director of Pharmacy Services, Moda Health

**Subject:** Moda Health Comments on Third Draft HB 4005 Rules and Proposed Net Yearly Increase Definition Options

Dear Mr. O'Brien and members of HB 4005 RAC,

Thank you for providing a Third Draft HB 4005 Rules for review and feedback. I am providing feedback on behalf of Moda Health as a participant in the Rulemaking Advisory Committee (RAC) for consideration by the Department of Consumer and Business Services' ("DCBS").

Moda's comments concern the following sections of the proposed Third Draft HB 4005 Rules:

- 836-200-0505 Definitions
- 836-200-0515 Threshold for Reporting Drug Price Increase
- 836-200-0530 Form and Manner Requirements for Drug Pricing Reporting
- 836-053-0473 Required Materials for Rate Filing for Individual or Small Employer Health Benefit Plans

### **836-200-0505 Definitions**

Item (5), Net yearly increase

Based on feedback from RAC participants DCBS supplied options to calculate when the net yearly increase satisfied the 10% target that require manufacturer reporting. These included:

- Option 1. would calculate a net yearly increase by comparing the WAC on December 31 of the reporting year to the WAC on December 31 of the prior year
- Option 2. would calculate a net yearly increase by comparing the average WAC in reporting year to the average WAC in the prior year
- Option 3. would calculate a net yearly increase by comparing the average WAC in December of the reporting year to the average WAC in December of the prior year
- Option 4. would calculate a net yearly increase by summing all percentage WAC increases over the course of the reporting year
- Option 5. would calculate a net yearly increase by comparing the highest WAC in the reporting year to the lowest WAC in the prior year
- Option 6. would calculate a net yearly increase by comparing the highest WAC in the reporting year to the lowest WAC in the prior year

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- Option 7. would calculate a net yearly increase by comparing WAC in each month in reporting year to the WAC in same month of prior year
- Option 8. would calculate a net yearly increase by comparing a WAC in effect for at least 60 days prior to 12/31 of a reporting year to a WAC in effect for at least 60 days prior to 1/1 of a reporting year

Of these options we believe that Options 2, 5, 6 or 7 would be acceptable options. Moda continues to advocate assessing how the average Wholesale Acquisition Cost (WAC) changes over the prior twelve months. These options we support, to a greater or lesser degree, help achieve this.

Moda's logic is founded in the following principals: the objective of HB 4005 is to assess the financial impact to Oregonians, both consumers and payers, of increases in drug prices of 10 percent or more annually. To determine this it is important by so doing will DCBS gain a better sense of the factors that are impacting prescription drug costs.

#### **836-200-0515 Threshold for Reporting Drug Price Increase**

Item (2)(a), Moda supports the proposal to establish as a reporting requirement the cost of a medication for a one-month supply if it exceeds \$100 at any point during the reporting period.

#### **836-200-0530 Form and Manner Requirements for Drug Pricing Reporting**

Item (3)(c), Moda agrees that bonafide Independent Charity Patient Assistance Program operating in full compliance with the guidance provided in the Department of Health and Human Services Office of the Inspector General's Supplemental Special Advisory Bulletin: Independent Charity Patient Assistance Programs should not be required to include information about the bonafide Independent Charity Patient Assistance Program.

#### **836-053-0473 Required Materials for Rate Filing for Individual or Small Employer Health Benefit Plans**

Moda recommends that consideration be given to drugs dispensed only in outpatient settings since a major objective of HB 4005 is to understand the factors contributing to pharmaceutical cost increases for consumers.

Drugs dispensed in outpatient settings are more likely to process against a member pharmacy benefit when a member's copay or coinsurance and out of pocket limits apply. Visibility of these drugs is limited as a result of coding and submission via paper claims rather than electronic submission via the PBM. Medical benefit drugs are coded by J-codes per the Healthcare Common Procedure Coding System. A J-code identifies the chemical name of the drug but is limited in that it does not identify the medication manufacturer, strength, or package size. Other billing limitations of the J-code include the following:

- Several different drugs may be represented by one J-code.
- J-codes do not specify drug quantity dispensed.

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- J-codes may not be assigned until up to 18 months after drugs are launched, forcing billing via an unclassified J-code.

As a result of these limitations, drugs billed using J-codes under the medical benefit are missing necessary information to provide accurate reporting to DCBS.

Thank you for your consideration of these changes and clarifications.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Nudge". The signature is stylized and cursive.

Robert Nudge  
Director of Pharmacy Services  
Moda Health