

November 26, 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: Third Draft of House Bill 4005 Rules

Dear Jesse:

Thank you for the opportunity for the Pharmacy Benefit Manager (PBM) industry to participate in 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 Third Draft of House Bill 4005 Rules discussed at the November 13, 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 tools proven 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 (1). We have consistently requested the rule language be aligned with the legislation passed earlier this year. The suggested edits are as follows:

(1) 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 ~~both pharmacy and medical~~ benefits for policies or certificates issued in this state and for the experience period covered in the filing, all the following:

- (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 language enacted by the legislature in Oregon House Bill 4005. The proposed third draft rule language addressing the 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 to provide notice and disclosure of information relating to the cost and pricing of prescription drugs to provide accountability for prescription drug pricing. The proposed rules require consideration of the net effect of rebates from insurers but does not have a corresponding requirement for manufacturers. 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.
3. Rebates or discounts negotiated by PBMs have no effect on the list price manufacturers set for their medicines. 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.<sup>i</sup> 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, could undercut a PBM's ability to negotiate effectively with drug manufacturers.
4. We feel it is important to limit insurer reporting to medicines billed under pharmacy benefits in outpatient settings. This represents the most consistent drug price reporting available to insurers and aligns with the intent of HB4005 to understand factors contributing to consumer pharmaceutical cost increases.
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

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<sup>1</sup> 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.