



Hearing Officer's Report to Agency on Rulemaking Hearing

Date: 7/22/2025

To: Department of Consumer and Business Services

From: Numi Lee Griffith, Hearing Officer

Subject: Rulemaking to implement insurer and PBM reporting requirements pursuant to House Bill 4149 (2024)

Hearing Date/Time: June 23, 2025, 11 a.m., Pacific Time
Hearing Location: Hybrid meeting conducted in person at Labor and Industries Building and virtually on Microsoft Teams
Comment Period End: June 30, 2025

Background

Oregon House Bill 4149 (2024) makes a number of changes to the state laws regulating Pharmacy Benefit Managers (PBMs). Most significantly, the bill changes the law's existing requirement for PBMs to register with the Department of Consumer and Business Services (DCBS) into a licensure requirement. The bill also adds new required data elements to the recently adopted PBM transparency law, ORS 735.537 (2023 SB 192).

Additionally, DCBS was notified by Legislative Counsel that language setting a minimum number of enrollees for insurers required to report drug pricing information under OAR 836-200-1630 was not supported by statute.

DCBS convened a Rulemaking Advisory Committee (RAC) which met and discussed the proposed changes between September and December 2024, leading to language which was adopted as a temporary rule effective January 1, 2025. The RAC was reconvened in May 2025 to address additional changes required due to legal questions raised related to the temporary rule as well as the language in the insurer reporting rule flagged for consideration by Legislative Counsel.

Hearing

DCBS conducted a hybrid public hearing regarding this rulemaking at 11 a.m., Pacific Time on June 26, 2025, with a deadline for testimony set at 5 p.m., Pacific Time on June 30, 2025. Division staff in attendance included the hearing officer, Karen Winkel as division rules coordinator, Courtney Whitlock with the Oregon Prescription Drug Affordability Board, Keith Turner as manager for PBM Compliance, and Sofie Parra as program coordinator for the Oregon Drug Price Transparency Program.

Representatives of Cambia Health Solutions, Prime Therapeutics (a PBM), Cigna / Express Scripts (insurer / PBM), Navitas (a PBM), the Oregon Department of Justice, John Murray (an independent pharmacist), patient advocacy organization Northwest Bleeding Disorders, and the patient advocacy organization Caring Ambassadors were also present virtually.

Summary of Testimony

No oral testimony was received during the public hearing. A written comment was received from the Pharmaceutical Care Management Association (PCMA), a trade group which represents PBMs. PCMA's comment proposed two changes: (1) adding the clause "in this state" to the amended text of 836-200-0418(g); and (2) restoring the clause "from a pharmacy benefit manager" to the amended text of 836-200-0440(8). This language in 836-200-0440(8) was included in the previously adopted final rule, but was deleted from the temporary rule effective January 1, 2025.

The RAC previously discussed adding the clause "for prescriptions dispensed by pharmacies in Oregon" to 836-200-0418(g)(A), and this change was included in the proposed rule. The department agrees that similar limiting language was not included in the amended text of 836-200-0418(g)(B), which would have been appropriate for consistency and clarity about the intent of the rule to capture data related to transactions in Oregon. However, adding the suggested "in this state" language to (g) would be redundant and could lead to confusion. Accordingly, the department has added equivalent limiting language "for prescriptions dispensed by pharmacies in Oregon" to 836-200-0418(g)(B), which addresses the concern raised by PCMA without diluting the clarity of the final rule.

The second proposed change, related to the deletion in 836-200-0440(8), would not have a significant substantive effect on the rule, and we agree that restoring this language would clarify that pharmacies may appeal low reimbursements by PBMs under the statutorily required appeal process, but could not appeal low reimbursement from another entity (such as an insurer that does not contract with a PBM to administer pharmacy benefits).


Recommendation

Having considered fully the testimony presented at the hearing and the written comments I recommend that the division amend the proposed rules with two changes:

(1) Amending the proposed language of 836-200-0418(g)(B) to read: “Any revenue obtained by the pharmacy benefit manager through spread pricing **for prescriptions dispensed by pharmacies in Oregon** as defined in ORS 735.537(1)(e).” (New text in bold).

(2) Amending the proposed language of 836-200-0440(8) to read: “A network pharmacy may appeal its reimbursement **from a pharmacy benefit manager** for a drug subject to maximum allowable cost pricing on the basis that the drug is less than the net amount that the network pharmacy paid to the supplier of the drug.” (restored text in bold).

I recommend that the department adopt the remainder of the proposed rules without further modification.



Hearing Officer
Division of Financial Regulation

This Summary and Recommendation are reviewed and adopted.

Signed this 25th day of July, 2025.



TK Keen, Administrator
Interim Insurance Commissioner
Division of Financial Regulation