

March 5, 2026

Oregon Prescription Drug Affordability Board
350 Winter Street NE
Salem, OR 97309-0405
pdab@dcbs.oregon.gov

Re: Oregon Prescription Drug Affordability Board: February 18, 2026, Meeting Materials

Dear Members of the Oregon Prescription Drug Affordability Board:

The Pharmaceutical Research and Manufacturers of America (“PhRMA”) is writing in response to the Oregon Prescription Drug Affordability Board’s (the “PDAB’s” or “Board’s”) meeting materials for its February 18, 2026, meeting (“February Board Meeting”), including the annual review of the PDAB’s policies and procedures and the 2025 Drug Review Report for the Oregon Legislature (collectively, the “Meeting Materials”).¹ PhRMA represents the country’s leading innovative biopharmaceutical research companies, which are focused on developing innovative medicines that transform lives and create a healthier world. Together, we are fighting for solutions to ensure patients can access and afford medicines that prevent, treat, and cure disease. PhRMA member companies have invested more than \$850 billion in the search for new treatments and cures over the last decade, supporting nearly five million jobs in the United States.

We provide below select comments and concerns with respect to the Meeting Materials for the February Board Meeting.

I. Annual Review of the PDAB’s Policies and Procedures

PhRMA reiterates its request that the Public Meetings Law (ORS 192.660(4)) be amended to enable the Board to review confidential, proprietary, and trade secret information in executive session without the media present.² Although the Board proposed an “[e]xemption under the Public Meetings Law (ORS 192.660(4)) from having media present at executive sessions” in its 2025 Policy Recommendations, the Legislature has not yet taken action on the Board’s recommendation.³ Absent a legislative solution, the Board is proposing to change its policies and procedures regarding the receipt and review of voluntarily submitted confidential, proprietary, and trade secret information.⁴ Under this proposal, the Board would “not accept, review, or retain information voluntarily submitted by anyone . . . that is designated or claimed as trade secret, confidential, or proprietary.”⁵

¹ February Meeting Materials (Feb. 18, 2026), available at <https://dfr.oregon.gov/pdab/Documents/20260218-PDAB-document-package.pdf>. In filing this comment letter, PhRMA reserves all rights to legal arguments with respect to Oregon Senate Bill 844 (2021), as amended by Oregon Senate Bill 192 (2023) and Oregon Senate Bill 289 (2025) (codified at Or. Rev. Stat. § 646A.693 *et seq.*) (collectively, the “PDAB Statute”), and the Board’s implementation of the PDAB Statute. PhRMA also incorporates by reference all prior comment letters to the extent applicable. *See, e.g.*, Letter from PhRMA to Board (Feb. 9, 2026); Letter from PhRMA to Board (Jan. 9, 2026); Letter from PhRMA to Board (Nov. 16, 2025); Letter from PhRMA to Board (Jan. 11, 2025); Letter from PhRMA to Board (Sept. 15, 2024); Letter from PhRMA to Board (Sept. 16, 2023); Letter from PhRMA to Board (May 14, 2023); Letter from PhRMA to Board (Apr. 16, 2023).

² *See* Letter from PhRMA to Board (Jan. 9, 2026) at 2; Letter from PhRMA to Board (Nov. 16, 2025) at 4-5.

³ *See* Letter from PhRMA to Board (Jan. 9, 2026) at 2; Letter from PhRMA to Board (Nov. 16, 2025) at 4-5.

⁴ *See* Meeting Materials at 12-13.

⁵ *Id.* at 13.

The PDAB Statute instructs that the Board “shall keep strictly confidential” a broad range of information, including information that is “[c]onfidential, proprietary or a trade secret.”⁶ Additionally, state and federal law protect trade secret information from disclosure, and such information cannot be disclosed publicly without violating state and federal prohibitions against the misappropriation of trade secrets.⁷ While PhRMA recognizes the Board’s effort to protect voluntarily submitted confidential, proprietary, and trade secret information from disclosure, PhRMA urges the Board to continue to seek legislative change that would allow the Board to review such information in executive session without media present.

II. 2025 Drug Review Report for the Oregon Legislature

PhRMA is also concerned about how the Board is presenting its rationale for “product specific cost and affordability determinations” in the Board’s 2025 Drug Review Report.⁸ The analyses purport to “summarize the factors supporting the board’s determinations that each selected product may create affordability challenges.”⁹ However, the Board’s analyses appear to be inconsistent with its deliberations and voting. For example, the Board states that it concluded an insulin product met “the criteria for cost and affordability impacts based on high utilization, substantial system-level spending, and patient cost-sharing exposure.”¹⁰ Yet, in its initial vote, the Board did not conclude that *any* of the insulin products under review could create affordability challenges.¹¹ The Board then reconsidered only one insulin product and reversed its affordability determination to satisfy an arbitrary statutory threshold, thereby engaging in the sort of “ad hoc” decision-making that the Oregon Administrative Procedures Act (“APA”) forbids.¹² The Board now presents a list of factors on which it purportedly based its affordability determination, factors which the Board did not cite when it reconsidered the insulin product.¹³ This inconsistency raises questions about the Board’s analyses and whether they may be post-hoc rationalizations of otherwise arbitrary decisions.

The Board’s overreliance on inapt metrics further compounds PhRMA’s concerns regarding arbitrary decision-making and demonstrates the challenge of assessing affordability without a definition of

⁶ PDAB Statute § 646A.694(7)(b) (emphasis added).

⁷ See 18 U.S.C. § 1839(5)(B)(ii)(II) (defining “misappropriation” under the federal Defend Trade Secrets Act); Oregon Uniform Trade Secrets Act, Or. Rev. Stat. § 646.461-.475; see also Letter from PhRMA to Board (Nov. 5, 2025) at 1-2; Letter from PhRMA to Board (Oct. 3, 2025) at 1-2. In addition, the Fifth Amendment’s prohibition against taking private property without just compensation similarly prohibits the uncompensated disclosure of trade secrets. Courts have made clear that “when disclosure [of pricing information] is compelled by the government,” even the “failure to provide adequate protection to assure its confidentiality . . . can amount to an unconstitutional ‘taking’ of property.” *St. Michael’s Convalescent Hosp. v. California*, 643 F.3d 1369, 1374 (9th Cir. 1981) (brackets and quotation marks omitted). For further discussion, see Letter from PhRMA to Board (June 28, 2024) at 4; Letter from PhRMA to Board (Aug. 1, 2023) at 1-2.

⁸ Meeting Materials at 33-38.

⁸ Meeting Materials at 33-38.

⁹ *Id.* at 33.

¹⁰ *Id.* at 37-38.

¹¹ See Letter from PhRMA to Board (Feb. 9, 2026) at 1-2.

¹² See *id.*; Ore. Rev. Stat., ch. 183; see also, e.g., *Gordon v. Bd. of Parole & Post Prison Supervision*, 343 Or. 618, 633 (2007) (describing the “legislative policy, embodied in the [Oregon Administrative Procedure Act (APA)], that decisions by administrative agencies be rational, principled, and fair, rather than ad hoc and arbitrary”); *Sun-Ray Drive-In Dairy, Inc. v. Or. Liquor Control. Comm’n*, 16 Or. App. 63, 72 (1973) (explaining that agencies have “discretion to make policies for even application, not discretion to treat each case on an ad hoc basis”); *Humane Soc. of U.S. v. Bryson*, 924 F. Supp. 2d 1228, 1236 (D. Or. 2013) (noting that an “agency’s decision would be arbitrary or capricious, for example, if the agency ‘relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise’”) (quoting *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

¹³ See Meeting Materials at 38; Letter from PhRMA to Board (Feb. 9, 2026) at 1-2.

“affordability.”¹⁴ For example, the analyses claim to base much of the Board’s affordability determinations on a drug’s wholesale acquisition cost (“WAC”) and total gross expenditures.¹⁵ As PhRMA has previously explained, WAC and gross expenditures are inappropriate metrics for making affordability determinations because they do not reflect the net costs to payers or patients’ out-of-pocket expenses.¹⁶ Additionally, several analyses misguidedly equate high utilization with high health care system burden, regardless of whether patient expenses or net costs remain low.¹⁷ The impact of price concessions on net costs (compared to gross spending) should not be dismissed or minimized either.¹⁸ Consistent with prior letters, PhRMA urges the Board to adopt drug selection and affordability criteria that account for discounts, rebates, and other price concessions, to the extent available, as this information is critical to understanding the true costs of drugs to patients and payers.¹⁹

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On behalf of PhRMA and our member companies, thank you for consideration of our comments. Although PhRMA has concerns about the Meeting Materials, we stand ready to be a constructive partner in this dialogue. Please contact dmcgrew@phrma.org with any questions.

Sincerely,



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¹⁴ See Letter from PhRMA to Board (Nov. 16, 2025) at 3.

¹⁵ See, e.g., Meeting Materials at 37-38.

¹⁶ See Letter from PhRMA to Board (Sept. 15, 2024) at 4-5.

¹⁷ See, e.g., Meeting Materials at 35-37.

¹⁸ See, e.g., Letter from PhRMA to Board (May 14, 2023) at 2; Letter from PhRMA to Board (Apr. 16, 2023) at 2.

¹⁹ See Letter from PhRMA to Board (Sept. 15, 2024) at 4-5; Letter from PhRMA to Board (May 14, 2023) at 2; Letter from PhRMA to Board (Apr. 16, 2023) at 2.