



December 11, 2023

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Department of Consumer and Business Services
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Salem, OR
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DELIVERED VIA EMAIL

Re: RAC draft language on reporting requirements – SB 192 from 2023

Dear Numi:

We submit this letter on behalf of the Pharmaceutical Care Management Association (“PCMA”) as a follow up to the both the November 13, 2023, meeting of the Rulemaking Advisory Committee (“RAC”) of the Division of Financial Regulation (“DFR”) at the Oregon Department of Consumer and Business Services’ (“DCBS”), as well as the draft language materials shared at that meeting.

PCMA is a national trade association representing pharmacy benefit managers (“PBMs”). PCMA member companies administer drug benefits for more than 275 million Americans, who have health coverage through employer-sponsored health plans, commercial health insurance plans, union plans, Medicare Part D plans, managed Medicaid plans, state employee health plans, and others. PBMs use a variety of benefit management tools to help these plans provide high quality, cost-effective prescription drug coverage to plan beneficiaries.

PCMA has concerns with the draft language shared at the RAC meeting on November 13, 2023. Presumably, at some point in the near future, this draft language, or some version of it, will go through the formal DFR and DCBS rulemaking process. If this is incorrect, please let us know.

During Oregon’s 2023 Legislative Session, Senate Bill (“SB”) 192 was enacted. As you know, this new law requires PBMs to annually report to the DCBS information about certain rebates, fees, and other payments. SB 192 also requires Oregon’s Prescription Drug Affordability Board (“PDAB”) to develop and report back to the Legislative Assembly, certain information.

In response, PCMA is in receipt of the RAC’s draft proposed changes to the existing Oregon Administrative Code (“OAR”) 836-053-0473, which currently only applies to small and individual Affordable Care Act (“ACA”) groups. We are also in receipt of the new OAR 836-053-????, which is RAC’s draft proposed rule that would include large groups in addition to small and individual groups. And finally, PCMA is in receipt of OAR 836-200-04??, which is RAC’s draft proposed rule for PBM aggregated rebate and payment reports.

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

It is PCMA's understanding from the RAC, via our member companies, the DFR and DCBS do not believe the draft language of these proposed rules need confidentiality protections beyond the underlying statute of SB 192. However, it is also PCMA's understanding from our member companies that DCBS would like to report out the data it receives in a manner that is different from how the State of Texas reports the data – because Oregon has decided to follow some of what Texas has done with regarding the mandated reporting for entities within the pharmaceutical supply chain.

Moreover, it is PCMA's understanding via its member companies, that the DFR and DCBS want to report data that is attributable to individual PBMs. However, this is unsupported by the underlying statute, SB 192. SB 192 states that any reporting cannot identify a carrier or enrollee. Depending on the individual PBM at issue, and its number and/or type of client carrier within Oregon, those reported amounts may be directly attributable to the carrier. In other words, a violation of statutory law.

PCMA understands from its members that the DFS and DCBS has stated that in an effort to get around the possibility of a violation of statutory law, it may take a different approach, and attribute specific data to generic entities, such as "PBM #1," "PBM #2," etc. However, within SB 192, Section 2(5) states:

...the department shall publish on the department's website the aggregated data from all reports filed by pharmacy benefit managers under this section for the preceding calendar year. The department shall publish the data in a manner that does not disclose confidential information of pharmacy benefit managers.

It would appear that the language of SB 192 prohibits even the reporting and/or publishing of data attributable to generically titled and/or categorized entities, as described above.

PCMA respectfully requests that the RAC include both include specific confidentiality protections regarding potential data disclosures, as well as additional reporting parameters, to ensure the inability of any individuals and/or entities from identifying and/or attributing the data at issue. This issue also applies to the additional draft proposed rules discussed below – **OAR 836-053-????** and **OAR 836-200-04??**.

OAR 836-053-???? – Drug Price Transparency Insurer Reporting

The following concerning language appears in this draft proposed rule:

(1) For the purposes of this rule, "insurer" means a licensed insurance company, health care services contractor, of health maintenance organization that issues health benefit plans in this state.



(2) No later than May 15 of each year, an insurer with 200 or more enrollees in the state of Oregon must report to the Department the information described in ORS 743.025(2) in any form and manner prescribed by the Department. For drugs reimbursed by the insurer under both pharmacy and medical benefits in health benefit plans, the reporting must include all of the following:

PCMA's understanding from the RAC via our member companies is that this language is not intended to include any groups/plans organized under the federal Employee Retirement Income Security Act ("ERISA") of 1974. It is also our understanding from the RAC via our member companies that by using a modification of the "insurer" definition in Oregon Revised Statutes ("ORS") 743(b).005. And that the RAC is intentionally leaving out from the draft language definition of "insurer," associations, trusts, and multiple employer welfare arrangements ("MEWAs").

PCMA respectfully requests clarification language, as well as confirmation from the RAC, that it does not intend to include ERISA plans within the definition of "insurer" for the draft rule.

OAR 836-200-04?? – Aggregated Rebate and Payment Reports

The following concerning language appears in this draft proposed rule:

(3) The amounts described in section (1) of this rule must include all payments that the pharmacy benefit manager received from manufacturers directly and any payments the pharmacy benefit manager received from the manufacturers' subsidiaries or otherwise affiliated entities.

During the 2023 Legislative Session, SB 404 referenced PBM group purchasing organization ("GPO") reporting. However, SB 404 was not enacted. Yet the draft language above would require GPO reporting. Therefore, the draft language exceeds the authority of the underlying statute, SB 192.

PCMA respectfully requests that the RAC remove this language from the draft rule.

PCMA and its member companies look forward to continuing to work and collaborate with both the RAC, as well as DFR and DCBS. If you have any questions, please do not hesitate to contact myself or my colleague Tonia Sorrell-Neal (Tsorrell-Neal@pcmanet.org or (202)-993-5323), PCMA's Senior Director for State Affairs.



Sincerely,

Peter Fjelstad

Peter Fjelstad
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PCMA

CC:

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