

THE FUTURE POLICY FRAMEWORK FOR PHARMACY

Legal Issues

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Disclaimer

Ted Falk represents Oregon Health Authority and the Department of Consumer and Business Services.

The views expressed in this presentation are his own and should not be attributed to OHA, DCBS, or DOJ.



Agenda

1. CCO 2.0 Pharmacy Policy Recommendations
2. Price Transparency
3. Pharmacy Benefit Managers: Regulation and Implementation



CCO 2.0 Pharmacy Policy Recommendations

Oregon Health Policy Board Adopted Policy Recommendations on October 15, 2018

Address increasing pharmacy costs and the impact of high-cost and new medications by:

- Policy #14 Increasing transparency of CCOs and their pharmacy benefit managers (PBMs)
- Policy #15 Increasing alignment of fee-for-service (FFS) and CCO preferred drug lists (PDLs)
- Policy #37 Establishing a statewide reinsurance pool for CCOs administered by OHA to spread the impact of low frequency, high cost conditions and treatments across entire program



CCO 2.0 Pharmacy Policy Recommendations

Policy #14 Increasing transparency of CCOs and their pharmacy benefit managers (PBMs)

Initial baseline expectations:

- CCOs require their pharmacy benefit managers (PBMs) to:
 - a) Provide pharmacy cost passthrough at 100%;
 - b) Pass back 100% of rebates received to CCOs;
 - c) Report administrative fees paid from CCO to PBM; and
 - d) Require reporting from PBM on pharmacy-paid amounts at claim level.
- Require transparent “no-spread” arrangements between CCOs and PBMs.
- CCOs require PBMs to agree via contract to third-party audits and market checks on an annual basis.



CCO 2.0 Pharmacy Policy Recommendations

Policy #15 Increasing alignment of fee-for-service (FFS) and CCO preferred drug lists (PDLs)

Initial baseline expectations:

- CCO PDLs and coverage/prior authorization criteria are publicly posted and easily accessible for patients and prescribers.
- CCOs align selected segments of their PDLs with the Oregon Health Plan's fee-for-service PDL.

Transformational expectations:

- Over time CCOs work with OHA to significantly increase alignment of CCO PDLs (and coverage criteria) across highly utilized drug classes to improve intrastate portability of the Medicaid program.



CCO 2.0 Pharmacy Policy Recommendations

Policy #37 Establishing a statewide reinsurance pool for CCOs administered by OHA to spread the impact of low frequency, high cost conditions and treatments across entire program

Initial baseline expectations:

Program implementation phased in:

- CCOs are better protected from unforeseen and unavoidable costs associated with high-cost patients and high-cost medical conditions.
- A program-wide reinsurance pool assists the rate setting process and reduces the volatility of rates associated with some patients.

Transformational expectations:

- OHA uses program-wide purchasing power to reduce costs associated with some high-cost treatments.



Price Transparency

State laws:

State	Enactment Date
• California	10/09/2017
• Florida	6/09/2017 and 3/23/2018
• Louisiana	6/14/2017 and 5/20/2018
• Maine	5/01/2018
• Nevada	6/15/2017
• New Hampshire	7/02/2018
• Oregon	3/12/2018
• South Dakota	3/11/2015
• Texas	5/26/2017
• Vermont	6/02/2016



Price Transparency

Oregon HB 4005, enacted March 12, 2018:

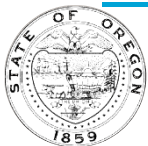
- Enacts the Prescription Drug Price Transparency Act.
- Requires prescription drug manufacturer to annually report information to DCBS regarding prices of prescription drugs and costs associated with developing and marketing prescription drugs.
- Requires health insurers that offer prescription drug benefit to report specified information about prescription drug prices and impact of prescription costs associated with developing and marketing prescription drugs to DCBS.
- Establishes a Task Force on the Fair Pricing of Prescription Drugs.



Price Transparency

HB 4005 Implementation

- Rulemaking advisory committee (with links to relevant public comments received to date):
<https://dfr.oregon.gov/help/committees-workgroups/Pages/prescription-price-transparency-rac.aspx>
- Joint Interim Task Force on Fair Pricing of Prescription Drugs (with links to a fairly bewildering amount of material):
<https://olis.leg.state.or.us/liz/201711/Committees/JFPRX/Oview>



Pharmacy Benefit Managers

Gag Rules

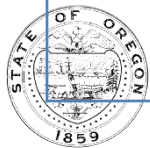
- “Why Your Pharmacist Can’t Tell You That \$20 Prescription Could Cost Only \$8,” New York Times, <https://www.nytimes.com/2018/02/24/us/politics/pharmacy-benefit-managers-gag-clauses.html>
- Prohibitions Enacted in 29 states (but not Oregon)
- Federal legislation signed 10/10/18, prohibiting gag rules in Medicare and commercial insurance



Pharmacy Benefit Managers

Litigation 2016-17

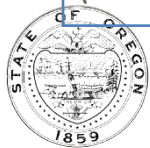
Kimberly A. Negron v. Cigna, <i>Case No. 3:16-cv-01702 (D. CT)</i>	2017
Elan and Adam Klein, Leah Weav, et. al v. Prime Therapeutics, Express Scripts, and CVS Health, <i>Case No 0:17-cv-01884 (D.MN.)</i>	2017
Boss v. CVS Health Corp., <i>Case No. 2:17-cv-01823 (D.N.J.)</i>	2017
Park Imrmat Drug Corp. v. Express Scripts, et al, <i>Case No. 17-cv-00979 (E.D.N.Y.)</i>	2017
In Re UnitedHealth Group PBM Litigation, <i>Case No. 16-cv-3352 (D.MN.)</i>	2016
Prime Aid Pharmacy Corp., v. Express Scripts, Inc., <i>Case No: 2:16-cv-02182 (E.D. Mo.)</i>	2016
Richard Medoff v. CVS Caremark Corporation, et al., <i>Case No: 1:09-cv-00554-JNL-PAS</i>	2016
Anthem v. Express Script, Inc., <i>Case No. 16-cv-2048 (S.D.N.Y.)</i>	2016
Burnett v. Express Scripts, Inc., <i>Case No. 1:16-cv-04948 (S.D.N.Y.)</i>	2016
Trone Health Services Inc et al. v. Express Scripts, <i>Case No.4:16-cv-01250-RLW (E.D. Mo.)</i>	2016



Pharmacy Benefit Managers

Litigation 2014-15

United States ex rel. DiMattia et al. v. Medco Health Solutions, Inc., <i>No. 13-1285</i> (<i>D. Del.</i>)	2015
Kmart Co. v. Catamaran Co., <i>No. 2015-L-008290 (Ill. Ct. Cl.)</i>	2015
Albert's Pharmacy, Inc. et al v. Catamaran Corporation, <i>Civ. No. 3:15-cv-00290-UN2 (M.D. Pa.)</i>	2015
U.S. ex rel., et al. v. Novartis Pharmaceuticals Corp., <i>No. 1:11-cv-08196 (S.D. N.Y.)</i>	2015
John Doe v. Medco Health Solutions Inc., et al., <i>Case No. 1:11-cv-00684 (D. Del.)</i>	2015
HM Compounding Services v. Express Scripts, <i>Case No. 14-cv-01858 (E.D. Mo.)</i>	2015
United States v. CVS	2015
Grasso Enterprises, LLC, et.al., v. Express Scripts, Inc., <i>Case No: 4:14-cv-01932 (E.D. Mo.)</i>	2014
United States ex rel. Well v. CVS Caremark, Inc., <i>Civil Action No.SA:11-CV-00747 (W.D. Tex.)</i>	2014



Pharmacy Benefit Managers

Litigation 2005-2014

Securities and Exchange Commission v. CVS Caremark Corp., <i>Civil Action No. 14-177-ML (D.R.I.)</i>	2014
Uptown Drug v. CVS Caremark, <i>Case No. 12-cv-6559 (N.D. Cal.)</i>	2012
In the Matter of CVS Caremark Co., <i>FTC No. 112 31210</i>	2012
HHS v. CVS	2009
Washington v. Caremark Rx., <i>No. 08-2-06098-5-SEA (Wash. Sup. Ct.)</i>	2008
In re Express Scripts, Inc. PBM Litigation, <i>No. 4:05-md-1672-HEA (E.D. Mo.)</i>	2008
United States of America v. Merck-Medco Managed Care L.L.C., et al., <i>No.: 00-cv-737 (E.D. Pa.)</i>	2006
United States of America, et al. v. AdvancePCS, Inc., <i>No. 02-cv-09236 (E.D. Pa.)</i>	2005

Source: <http://www.pbmwatch.com/pbm-litigation-overview.html>



Legal Issues

Questions?

