

2023 Policy Recommendations for the Oregon Legislature and the Health Care Cost Growth Target Program **December 2023**



**Oregon Prescription Drug
Affordability Board**



2023 Policy Recommendations

Introduction

The Prescription Drug Affordability Board (PDAB) was established under Senate Bill 844 (2021) and is supported by the Department of Consumer and Business Services (DCBS). PDAB aims to protect residents in Oregon, state and local governments, commercial health plans, health care providers, pharmacies licensed in the state, and other stakeholders within the health care system of Oregon from the high costs of prescription drugs.

At its outset, PDAB had five voting members and three alternate members with expertise in health care economics and clinical medicine. In September 2023, under Senate Bill 192, alternate members became full voting members. The board now consists of eight members appointed by the governor to conduct affordability reviews to identify drugs that may present affordability challenges to Oregon residents or health systems. At the time of this writing, the board consists of seven members with one vacancy.

Senate Bill 844, Section 5

The board is required by statute to report to the Legislature and the Oregon Health Authority's Health Care Cost Growth Target program price trends of prescription drugs provided to the board from DCBS, a list of nine drugs and at least one insulin product that may create affordability challenges, and any recommendations for legislative changes to make prescription drug products affordable in Oregon.

Section 5(1): price trends

The board is in the process of studying price trends and will submit its findings in June 2024.

Section 5(2): affordability review

Given the depth and breadth of analysis and decision-making involved in the affordability review process, the board will submit the list in June 2024.

Section 5(3): recommendations

PDAB is submitting three recommendations for legislative changes necessary to make prescription drug products more affordable in this state.

PDAB solicited concepts for policy recommendations from the public that were solution-based to address prescription drug affordability concerns. The board received policy recommendations from six stakeholders: American Diabetes Association, Chronic Disease Coalition, International Cancer Advocacy Network, Johnson & Johnson, Pharmaceutical Research and Manufacturer's Association, and Strategies360. The board also received recommendations from four groups that presented industry information at board meetings in



2023: America's Health Insurance Plans (AHIP), T1International, Oregon Primary Care Association (OPCA), and Oregon State Pharmacy Association (OSPA).

The board determined some of the policy recommendations would require further study of the issues, along with robust stakeholder engagement. The board selected the following three policy recommendations:

1) Lower insulin co-pay limit to \$35 and/or decouple from inflation index

In 2021, Oregon enacted a law (ORS 743A.069) capping patient out-of-pocket cost for insulin for enrollees of state-regulated health plans, with increases annually indexed to inflation, as measured by the Consumer Price Index – G (CPI-G). Inflation has generally been higher than expected in 2022-23, leading to faster growth in the CPI-G and faster-than-anticipated growth in Oregon's insulin cap, which will be \$85 during plan year 2024. Concurrently, additional generic insulins were brought to market, and prominent manufacturers of brand-name insulins have dropped their list prices. Due to this, the \$85 cap in 2024 will be significantly higher than the actual acquisition cost for most insulin prescriptions in Oregon.

PDAB supports the American Diabetes Association's (ADA) proposal to lower Oregon's statutory insulin co-pay maximum to \$35. This would align Oregon law with the recently adopted federal maximum for Medicare and many other state laws. The ADA and T1International also proposed decoupling Oregon's insulin co-pay law from the Consumer Price Index.

Lowering the insulin cap can reduce out-of-pocket costs for consumers who rely on more expensive insulin, with little impact on overall payer costs. Given the reduced list price for standard insulins, Oregon's law – as currently written – does not apply to most insulin purchases.

2) Change Oregon's statute language regarding substitution requirements for biological products and biosimilars

The board recommends updating ORS 689.522, which addresses substitution of biological products and limits how substitutions can be made, to include biosimilar products and interchangeable biosimilar language. The board supports using the definition for biosimilars that is consistent with 42 USC 262(i)(2). This change could lead to broader adoption of biosimilar substitutions. In addition, since physicians could still direct a pharmacy not to perform a substitution for a particular patient, people who experience adverse outcomes with a biosimilar could still access branded biological products. Increased adoption of biosimilars and interchangeable biosimilars has the potential to generate significant savings for the whole health system.



Biosimilars are comparable to the FDA-approved reference product and provide more availability for treatment options, have the same safety and effectiveness as the reference product, and most often lower costs to patients and the health care system. Currently, there are 44 FDA-approved biosimilar products available for 11 reference products.¹ Biosimilars are a growing category in a market where almost all the highest-cost medications are biological products. This is particularly notable for drugs such as Humira, which faces biosimilar competition in the United States for the first time this year and has consistently been the most significant driver of increased plan spending in Oregon's data.² However, despite the much lower cost, some reports show low adoption of Humira biosimilars, primarily due to the manufacturer's ability to leverage other drugs in its catalog to maintain priority formulary placement for Humira.

Strategies360 and AHIP proposed amending the language in ORS 689.522 to ensure access to substituted biosimilar products when and where they are available.

3) Expand pharmacy benefit managers (PBMs) reporting requirements for more transparency

The Chronic Disease Coalition, Johnson & Johnson, Pharmaceutical Research and Manufacturer's Association (PhRMA), and the International Cancer Advocacy Network all proposed improving transparency of PBMs' activity by expanding reporting requirements, pointing to the Oregon Secretary of State's 2023 audit of PBMs serving Medicaid.³ Oregon will begin collecting PBM data in 2024 following the passage of the Senate Bill 192 (2023), which requires PBMs to report aggregated amounts for rebates, fees, and price protection payments, and how those discounts are allocated.

Transparency laws can impact corporate behavior, but the effect is often attenuated. However, minimal public information about PBM business practices and pricing models makes state regulation of PBMs difficult. Collecting additional data could generate more insight into the role of PBMs in drug pricing and support the development of more substantive policy recommendations concerning PBMs in the future.

Summary

The Prescription Drug Affordability Board appreciates the policy recommendation concepts submitted from stakeholders to address prescription drug affordability concerns in Oregon. The

¹ "Biosimilar Product Information." U.S. Food & Drug Administration, Nov. 1, 2023.

<https://www.fda.gov/drugs/biosimilars/biosimilar-product-information>. Accessed Nov. 27, 2023.

² "Oregon Drug Price Transparency Program Annual Report 2022." Oregon Drug Price Transparency Program, Nov. 30, 2022. <https://dfr.oregon.gov/drugtransparency/Documents/Prescription-Drug-Price-Transparency-Annual-Report-2022.pdf>. Accessed Nov. 27, 2023.

³ "Oregon Health Authority, Pharmacy Benefit Managers: Poor Accountability and Transparency Harm Medicaid Patients and Independent Pharmacies." Oregon Secretary of State Audits Division, August 2023. <https://sos.oregon.gov/audits/Documents/2023-25.pdf>. Accessed Nov. 27, 2023.



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board considered all the recommendations and carefully selected three to include in the annual report for the Oregon Legislature.

The board brings forward the following three recommendations:

- Lowering insulin co-pays to align with current market price reductions
- Enhancing substitution of biologicals product with biosimilar and interchangeable products
- Expanding pharmacy benefit managers' reporting requirements for more transparency

The board urges the Oregon Legislature to consider these recommendations to improve existing policies and reporting transparency.