

March 27, 2018

Gov. Kate Brown  
Office of the Governor  
900 Court Street, Suite 254  
Salem, OR 97301-4047

**RE: Transparency in Oregon Drug Pricing  
T1DF's Public Record Request for Certain Records/Information from the Oregon  
Prescription Drug Program (OPDP) Regarding Drug Pricing Transparency**

Dear Gov. Brown,

The Type 1 Diabetes Defense Foundation reached out to you earlier this month regarding HB 4005. We expressed concern about the selective disclosures required under this new legislation, passed under the banner of "transparency." T1DF is an Oregon-based nonpartisan 501(c)(3) nonprofit and the only U.S. legal advocacy organization solely dedicated to the rights of people with type 1 and other insulin-dependent diabetes. We receive no funding from the pharmaceutical, pharmacy benefit management, or insurance industries.

We read your decision to sign HB 4005 into law as a walk-back from your stated concern regarding prescription drug pricing and pricing transparency in Oregon.

T1DF is very concerned that the selective disclosure regime of HB 4005—coupled with its directly misleading statutory definition that the "price" of drugs is the unrebated proprietary Wholesale Acquisition Cost, not insurers' much-lower net cost—is a license to discriminate and stigmatize by blaming health insurance premium increases on people with medical conditions requiring reliance on insulin and other "expensive" drugs, in part by directly misleading the public about the actual cost of those drugs. With UnitedHealth and now Aetna's recent announcements of an intended shift to rebate pass-through, HB 4005 is already outdated and moot. Its sole effective contribution will be to enshrine in Oregon law a WAC price construct that is both superseded and misleading.

The discriminatory implications of HB 4005 are particularly evident when the misleading definition of “price” is coupled with this new law’s reporting mandate that insurers designate specified drugs as a factor in health insurance premium increases. In the absence of corresponding disclosure regarding the massive scale of rebating on drugs like analog insulins (rebated at approximately 75% off list price)—and insurers’ cost basis for actuarial valuation (i.e. insurers’ use of gross claims expense)—such a disclosure regime will entice Oregonians to believe that insurers actually pay list price for the pharmaceuticals that treat their friends and neighbors who have chronic conditions like diabetes.

In fact, as you are well aware, insulin and many other pharmaceuticals likely to show up on HB 4005’s disclosure list are heavily rebated to entities including health insurers operating in Oregon and Oregon-operated entities like the Oregon Prescription Drug Program. These entities’ failure to pass rebates through to individual patients is, in fact, the primary factor driving upwards the list prices of analog insulins, drugs that were prominently featured when promoting HB 4005. Yet HB 4005 invites further stigma against the people most directly injured by this practice, by enticing Oregonians to believe that the “price” of these patients’ drugs to insurers is *four times their actual net cost*.

We now seek backing from your administration for true drug-pricing transparency measures: T1DF’s public records requests on drug pricing, rebating and related issues that we have already sent to the Oregon Prescription Drug Program (OPDP) and may send to other state agencies, including the Oregon Insurance Commissioner/Division of Financial Regulation.

As you eloquently explained to the U.S. Senate H.E.L.P. Committee earlier this month, *“Innovative programs [like the Oregon Prescription Drug Program and the Northwest Prescription Drug Consortium with Washington] have enabled Oregonians to benefit from more aggressive prescription drug pricing, a result of pooling our drug purchasing. Since 2007, groups that joined the Consortium have seen savings on their pharmacy benefit programs, more aggressive prescription drug prices, 100% pass-through pricing on drug costs and manufacturer rebates, lower administrative costs and complete program transparency.”* (Kate Brown, Governor of Oregon, Testimony before the Senate Committee on Health, Education, Labor and Pensions, March 8, 2018: <https://www.help.senate.gov/imo/media/doc/Brown11.pdf>)

As you will see from the attached documents, T1DF has recently requested disclosure from OPDP to document if and how Oregon’s “aggressive prescription drug pricing” and “100% pass-through pricing on drug costs and manufacturer rebates” have translated into lower prices for the low-income Oregonians who rely on OPDP for life-saving medications like insulin. Do OPDP’s actual drug prices offered to Oregonians back up those claims?

T1DF believes that any drug-pricing transparency initiative logically begins where the state has greatest regulatory authority—the health insurance plans that operate under the watch of Oregon’s Division of Financial Regulation and the Oregon Prescription Drug Program and Northwest Prescription Drug Consortium in which the state is directly involved. OHA’s disclosure performance on OPDP now will provide a transparency benchmark against which drug manufacturers’ transparency endeavors under HB 4005 will be measured.

We look forward to seeing the Governor’s office confirm it shares T1DF’s commitment to transparency—a confirmation that your office can now deliver by urging OHA to respond to our OPDP requests via timely and thorough pricing disclosure. You can readily signal Oregon’s commitment to drug pricing transparency by publicly urging OPDP and the Division of Financial Regulation to proceed rapidly in complete compliance with public records disclosure laws on the drug-pricing transparency requests we have made to date and may make in the future. As stated in our attached public records requests, we now expect the full cooperation of Oregon Health Authority Director Pat Allen, Health Policy and Analytics Director Jeremy Vandehey and OPDP Director Dr. Trevor Douglass. It shouldn’t take OPDP, Moda and Medimpact more than a couple of hours to collate the data we have requested.

We are available if the Governor’s office would like further information regarding diabetes drug pricing or any other issue that affects the people we represent.

Regards,



Julia Boss

President

Type 1 Diabetes Defense Foundation

Attachments:

- March 12, 201[8] Public Records Request addressed to Keely L. West, Oregon Health Authority
- March 14, 201[8] Supplemental Public Records Request addressed to Keely L. West, Oregon Health Authority.