

June 7, 2018

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

RE: OPDP Must Pass Manufacturer Rebates to Discount Card Holders

Dear Gov. Brown,

Since late May, the Eugene, Oregon-based Type 1 Diabetes Defense Foundation, a 501(c)(3) nonpartisan organization acting to protect the rights and interests of people with insulin-dependent diabetes,¹ has been publicly raising questions about the Oregon Prescription Drug Program (OPDP). We now urge you to address the oversight failure that has allowed OPDP to overcharge under- and uninsured Oregonians instead of fulfilling its statutory mandate to offer the lowest possible prices to OPDP discount card holders.

OPDP was created in 2003 (and expanded in 2006-07) to negotiate manufacturer rebates and deliver to both programs and discount card holders the "lowest possible cost" for prescription drugs—similar to the low net prices actually paid by commercial health insurers, net of discounts and manufacturer rebates, as a "means to promote health." Net-cost pricing to individual discount card holders was the legislative mandate behind 2006's Measure 44, overwhelming supported by Oregon voters with a 78% "yes" vote.

In March 2018, the same week you signed HB 4005 (a bill that pretends Oregon's lawmakers don't understand how drug pricing works), you testified to the U.S. Senate HELP Committee about the "competitive pricing" and "100% rebate pass-through" to programs that Oregon has achieved via OPDP and the Northwest Prescription Drug Consortium. You did not mention OPDP discount card holders.

Manufacturer rebate pass-through to OPDP discount card holders, under- and uninsured Oregonians, never happened.

For standard-of-care analog insulins like Humalog and Novolog, reported net rebates to payers and large bulk purchasers now exceed 75% of list prices. OPDP's discount card holders should be paying less than **\$80 per 10 ml vial**, including OPDP administration fee (less than \$0.60 per script) and negotiated pharmacy dispensing fee (less than \$12). Instead, OPDP directs discount card holders to pay **\$270.71** for a 10 ml vial of Novolog and **\$269.85** per 10 ml vial of Humalog.

¹ T1DF accepts no funding from the pharmaceutical, pharmacy benefit management, or insurance industries.

\$269.85 per 10 ml vial is manifestly not the “lowest possible cost” for Humalog insulin.

Even commercial enterprises like BlinkHealth and GoodRx charge far less than OPDP (BlinkHealth's Humalog price is \$178.90 per vial, GoodRx prices Humalog at \$177.87). These are for-profit startups that, like OPDP, pool customers' prescriptions to negotiate larger rebates, i.e. lower net prices, from drug manufacturers—similar to the net prices PBMs, insurance companies and government programs like OPDP actually pay.

These for-profit enterprises pass a smaller fraction of the rebates to their customers. In the absence of public reporting on net prices (due in no small part to OPDP's failure to pass rebates to its discount card holders), these enterprises gain undue commercial benefit from the huge spread between gross/list price and rebated net for 'deep-discount' specialty drugs like insulin.

OPDP should be delivering to its discount card holders much lower, *not much higher*, prices than the prices offered by for-profit bulk purchasing organizations like BlinkHealth and GoodRx.

HB 4005, which you signed into law in March, hides the fact that Oregon has been negotiating manufacturer rebates to lower Medicaid and OPDP drug net costs for over a decade. Oregon participates in two multi-state bulk purchasing initiatives specifically created to negotiate larger rebates with drug manufacturers:

- **The Sovereign States Drug Purchasing Consortium** is an organization of 12 state Medicaid programs² that have agreed to collectively negotiate supplemental rebates from manufacturers; SSDC serves over 7.2 million covered lives and collectively negotiate \$7 billion of annual Medicaid drug spend.³
- **The Northwest Drug Pricing Consortium** was established in 2006 when Washington and Oregon agreed to pool their prescription drug purchasing to lower drug costs for groups and individuals. In 2017, the Consortium facilitated in excess of \$800 million in annual drug purchases for over 1 million individuals in Oregon and Washington.⁴

According to OPDP's own consultant, The Burchfield Group, OPDP receives rebates and guaranteed net prices that are within 5% of the prices negotiated by large commercial insurers. But OPDP does not share the benefit of these manufacturer rebates with individual discount card holders in the form of low prices at the pharmacy point of sale.

² https://www.rxssdc.org/sites/default/files/uploaded_files/RCY2019%20SSDC%20Fact%20Sheet_20180402_v2%20SL.pdf#overlay-context=node/105

³ SSDC is larger than the largest employer group purchasing organization, Towers Watson's Rx Collaborative.

⁴ <https://www.hca.wa.gov/assets/program/consortium-specialty-program-description.pdf>

Where does the manufacturer rebate money, earned for each specialty drug purchase made by a discount card holder, go?

Manufacturer rebates earned by discount card holders' purchases of insulin and other deep-discount rebated prescription drugs seem to be captured and possibly transferred to other OPDP programs, while OPDP discount card holders pay as much as **300% to 400%** of OPDP's net cost for insulin. This rebate-capture scheme breaches OPDP's statutory mandate to pass the lowest possible cost to all members, including its discount card holders.

OHA, OPDP and Moda Health (and its PBM, MedImpact) know that OPDP discount card holders are being overcharged and that manufacturer rebates earned on discount card purchases are being misallocated instead of being used to lower drug prices to under- and uninsured Oregonians.

If large manufacturer rebates are not passed to OPDP discount card holders, Oregonians ought to know *"where the money goes."*

Price transparency in Oregon must start with a long-overdue audit of Oregon's own prescription drug bulk purchasing and discount card programs, including a detailed investigation of manufacturer rebate allocation.

At the May 18, 2018, meeting of the Joint Task Force on Fair Pricing of Prescription Drugs, T1DF's vice president Charles Fournier asked Task Force members whether, if the Oregon Prescription Drug Program had been properly implemented to deliver the "lowest possible cost" to Oregonians, including discount card holders, HB 4005 would ever have been needed. T1DF filed supporting written comments on May 19.⁵

T1DF has further asked that the Civil Enforcement Division of the Office of the Attorney General and the Audits Division of the Secretary of State investigate OPDP's representation that the unrebated list prices it charges discount card holders for brand drugs are "discounted" or "rebated" prices.⁶

We now urge you to put the weight of your office behind this audit and investigation and towards the realization of the full rebate pass-through originally promised to OPDP discount card holders, *but never delivered.*

Oregon voters and the business community overwhelmingly supported OPDP expansion under Measure 44 as a cost-neutral way to improve public health by offering under- and uninsured Oregonians access to affordable drugs at the low net prices paid by commercial insurers (which is obviously not \$270 per vial to cardholders while OPDP pays 1/4 of that). OPDP is a progressive and far-

⁵ <https://www.t1df.org/news/2018/5/21/t1df-statement-to-oregons-joint-interim-task-force-on-fair-pricing-of-prescription-drugs>

⁶ Other discount card programs offered in Oregon should also be investigated. See, e.g., Polk County's NACo County Prescription Discount Card Program.

reaching initiative that was meant to be an immediate solution to the drug price and access crisis in Oregon, especially as it relates to heavily rebated drugs like insulin. OPDP wasn't meant to become a mechanism to stealthily capture and transfer the benefit of rebate revenue earned by the most vulnerable Oregonians in order to subsidize pharmacy benefits in programs such as PEBB. This rebate-capture scheme must immediately end.

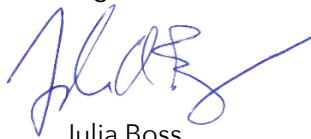
Enforcing OPDP's statutory responsibility to deliver "lowest possible cost" to under- and uninsured Oregonians would provide immediate relief to under- and uninsured Oregonians with type 1 diabetes and other medical conditions requiring access to 'deep discount' specialty or brand drugs to preserve life and health. It would also trigger the net pricing transparency needed to realign payers' (and, apparently, state bulk purchasing programs') interests behind delivering low prices to patients.

Your administration should immediately consider the following three improvements:

- **Third Party Administrator:** Your administration should assess the performance of OPDP's current Third Party Administrator, Moda Health, and their involvement in the above-mentioned rebate-capture scheme. If injuries have been caused to under- and uninsured Oregonians who are OPDP discount card holders, the matter should be referred to the Oregon Department of Justice but also to competent federal authority such as the Civil Rights Division of the U.S. Department of Justice for further investigation.
- **Alternative Procurement Options:** In anticipation of the termination or renewal of OPDP's TPA contract, alternative options should immediately be explored. Commercial insurers have an inherent conflict of interest here. A bulk purchasing and discount card program would be better managed by an independent pharmacy, a fully transparent PBM like Navitus or a pharmacy group purchasing organization like Towers Watson's Rx Collaborative.
- **Regulatory Oversight:** Finally, your administration should work with the Oregon Legislature and independent patient organizations like T1DF to reinforce OPDP's rebate pass-through mandate, put in place a transparent audit regime on the model of Rx Collaborative's annual dual-book audit of its PBMs, and address OHA's oversight failure.

T1DF strives to educate actors on both sides of the political aisle on the need for true net pricing transparency. We are available if you have any questions regarding this OPDP rebate pass-through crisis, or other consumer or civil rights issues affecting Oregonians with insulin-dependent diabetes.

Regards,



Julia Boss

President

Type 1 Diabetes Defense Foundation