America's Health Insurance Plans

BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

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July 10, 2019

Assemblywoman Pamela Hunter
New York State Assembly
LOB 553
Albany, NY 12248

Representative Tom Oliverson
Texas House of Representatives
Room E2.720
Austin, TX 78768

RE: BCBSA & AHIP Comments on NCOIL Model Act Concerning Prescription Drug Costs

Dear Assemblywoman Hunter and Representative Oliverson,

America's Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association (BCBSA) appreciate the opportunity to provide comments on the National Council of Insurance Legislators (NCOIL) Model Act Concerning Prescription Drug Costs (Model). AHIP and BCBSA share your goal of helping consumers who are facing rising prescription drug prices and a lack of meaningful and transparent information about these prices.

AHIP is the national association whose members provide coverage for healthcare and related services, offering health and wellness products in every insurance market, in every state, to individuals, families, small and large businesses as well as Medicaid and Medicare beneficiaries. BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies that collectively provide healthcare coverage for one in three Americans. For 90 years, BCBS companies have offered quality healthcare coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

Discussion of the proposed transparency Model has led to an important conversation at NCOIL about the burdens that consumers face from skyrocketing drug prices that threaten access to vital treatments. The latest draft of the Model and the changes it includes represent an important step toward ensuring that the final version adopted by NCOIL helps facilitate real transparency and disclosure of meaningful information. This is critical to helping consumers and policymakers better understand pricing practices in the prescription drug market. However, we believe additional steps can be taken to enhance an already much-improved draft of the Model.

In joint comments submitted by BCBSA and AHIP in March 2019, we noted that the reporting requirements for manufacturer price increases proposed at that time were unlikely to yield significant data. This conclusion was reached because the thresholds for reporting were set so high that many egregious and unjustified price increases would be excluded from the reporting requirement. Our comments specifically noted that the proposed 50% price increase threshold for reporting was much weaker than any currently enacted state law for drug price reporting, which would place NCOIL outside of current state trends and hinder the ability of transparency to inform consumers and lawmakers.

We applaud the decision to address this by amending Section 4(b)(1) to provide a more meaningful threshold for the manufacturer reporting requirement. By reducing the threshold from the originally proposed 50% increase, the Model is likely to result in the reporting of substantially more information to help study and address the rising cost of drugs. However, we believe Section 4(b)(1) can be further amended to build on the important changes included in the current draft.

The most prominent change from the first version of the draft Model to the most recent draft is that the language now requires manufacturers to report on any price increase exceeding 15% in the preceding calendar year or 60% over the preceding five calendar years. While we are supportive of this change, the current version of the Model would still permit manufacturers to raise prices up to 14.99% without ever providing any explanation or data demonstrating the reason for the increase. If this model is adopted in a state, an insurance department will receive annual reports from every health plan and PBM operating in the state per state oversight of these entities but may receive little to no data from drug manufacturers.

> **Recommendation**: We recommend the threshold for the reporting requirement should be further reduced to require reporting for any increase over 10%, as other states have done. This will increase the likelihood of states receiving data from manufacturers. It also will reduce the likelihood that manufacturers will burden consumers with repeated, smaller price increases (e.g., two 7.49% increases in a year) intended to avoid reporting requirements. Currently, all health plans are required to file their rates with state insurance departments, regardless of the size of any rate increase. **Pharmaceutical companies have for years publicly pledged to voluntarily abide by a 10% cap on increases and holding them to that promise is an appropriate and reasonable request.**[i]

With regard to the PBM section, we remain concerned that the data in the public report may still contain identifying information. We would like to see this provision amended to ensure that any data in the report is aggregated and reported across all PBMs and insurers, to ensure that there is no way to identify a particular PBM or insurer. This is important as otherwise a drug manufacturer may be able to ascertain competitive information by using this report combined with other publicly available data and their own internal data to find out what their competitors are charging. This would create a disincentive for them to offer deeper discounts and prevent PBMs from using negotiating leverage. This would greatly reduce discounts used to lower costs for plan sponsor clients and their members.

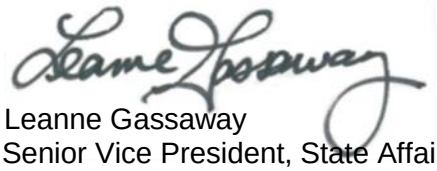
> **Recommendation:** We recommend including the following language within section 5 of the most recent draft of the model: "The department shall compile the information reported pursuant to this section into a report for the public and legislators that demonstrates the overall impact of drug costs. The data in the report shall be aggregated and shall not reveal information specific to an individual pharmacy benefit manager or health insurer."

The discussion around this draft Model has been and should remain focused on one thing: the rising costs of prescription drugs. Already in 2019, the price of generic and brand-name drugs has risen more than 13%[ii]. When prescription drug cost increases are expected to be double that of overall medical cost trends in 2020, all stakeholders should agree that merits significant scrutiny.

Unfortunately, many substantial increases could go unreported and unstudied under the current Model. Sufficient data and information about the factors leading to price increases are critical to addressing the costs that burden both consumers and overwhelm our health system. The focus of this effort should be on reducing costs, which is best achieved by maximizing the scope of price increases subject to the Model's reporting requirements.

We appreciate your consideration of our comments. We share the goal of working to ensure prescription drugs are more affordable and accessible for consumers. If you have any questions or want additional information, please contact Jeremy Crandall at (202) 626-4802 or jeremy.crandall@bcbsa.com, or Leanne Gassaway at (202) 861-6365 or lgassaway@ahip.org.

Sincerely,



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[i] "US pharma industry holds to price-cap pledge." Pharmaceutical Technology. Retrieved from https://www.pharmaceutical-technology.com/comment/us-pharma-industry-holds-price-cap-pledge/. Originally published 2018.

[ii] Owermohle, Sarah. "The evolving picture on drug price hikes." Politico. Retrieved from https://www.politico.com/newsletters/prescription-pulse/2019/07/02/the-evolving-picture-on-drug-price-hikes-453193. Originally published 2019.