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For Immediate Release
January 13, 2020
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NCOIL ADOPTS DRUG PRICING TRANSPARENCY MODEL ACT

*Promotes Accountability and Establishes Reporting Requirements
to Ensure Honesty with Patients*

Manasquan, NJ – At the recently concluded 2019 NCOIL Annual Meeting in Austin, TX, the organization adopted the NCOIL Drug Pricing Transparency Model Act sponsored by Texas Representative Tom Oliverson, M.D., 2019 Health Committee Vice-Chair, and co-sponsored by Louisiana Sen. Dan “Blade” Morrish, former NCOIL President. The measure passed without objection on a voice vote and was affirmed by the NCOIL Executive Committee.

TX Rep. Oliverson said, “I want to thank everyone involved for their input. The NCOIL Drug Pricing Transparency Model Act has come a long way since the topic was first discussed in March of 2018. I am proud to have sponsored this measure, along with similar legislation that has been enacted in my home state of Texas, and I am pleased with the hard work the Committee has done to meet the objectives of ensuring that policymakers are doing everything they can to help states understand why prescription drug prices are increasing.”

LA Sen. Blade Morrish said, “I want to express my appreciation to Rep. Oliverson for his work on this and echo what Rep. Oliverson stated. The Model language allows for everyone to learn from one another and more quickly put into place legislation and practices that will effectively serve to support incentives and hold all participants in the delivery of healthcare to the same standards of accountability,” he concluded.

The topic of drug pricing transparency was introduced at the 2018 Spring Meeting in Atlanta, where then NCOIL Vice President, Vermont Representative Bill Botzow, and then NCOIL Secretary, California Assemblyman Ken Cooley, had presented laws from their respective states for distribution to the Committee. Their legislation focused on reporting and notification requirements for prescription drug manufacturers.



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With the departure of VT Rep. Botzow from the legislature, the starting point for a framework on an NCOIL Drug Pricing Transparency Model Law was delayed until the 2018 Annual Meeting in Oklahoma City, where the Model was introduced for initial discussion. TX Rep. Oliverson chose to use provisions from the drug pricing transparency laws already enacted in Louisiana and Connecticut to start the discussion.

NCOIL worked closely on the Model with interested parties such as the Pharmaceutical Research and Manufacturers of America (PhRMA), the Pharmaceutical Care Management Association (PCMA), America’s Health Insurance Plans (AHIP), and several consumer advocates over the course of the past year. The purpose of the Model is to promote prescription drug pricing transparency and cost control.

Highlights of the Model include the requirement for drug manufacturers to report price increases over a certain threshold (sixty percent or greater over the preceding five calendar years or fifteen percent or greater in the preceding twelve months for drugs over \$70 per month) as well as a statement of rationale regarding the factor or factors that caused the increase; the requirement for pharmacy benefit managers to report the aggregated dollar amount of rebates, price protection payments, fees and any other payments collected from pharmaceutical manufacturers that were retained as revenue by the PBM; and the requirement for health insurers to report the percent increase in annual net spending for prescription drugs across all plans and the percent increase in premiums that were attributable to prescription drugs across all plans. The Model requires this and other information to be reported to the State Insurance Commissioner who is then required to publish the data in an appropriate location on the Insurance Department’s internet website.

“This is exactly why the work of this Committee is so important. The NCOIL Drug Pricing Transparency Model is so timely. The most important thing for patients is that they really need to know how much the drug costs when they go to the pharmacy, and NCOIL believes that policymakers have a right to know about cost changes and factors that caused increases in wholesale acquisition costs,” said Commissioner Tom Considine, NCOIL CEO.

A full copy of the model is below.

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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

AN ACT CONCERNING PRESCRIPTION DRUG COSTS

**Sponsored by Rep. Tom. Oliverson, M.D. (TX)*

**Co-Sponsored by Sen. Dan “Blade” Morrish (LA)*

**Adopted by the Health Insurance & Long Term Care Issues Committee on December 11th, 2019 and by the Executive Committee on December 13th, 2019.*

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Section 1. Title

This Act shall be known as the [State] Health Care Cost Transparency Act.

Section 2. Purpose

The purpose of this Act is to promote prescription drug price transparency and cost control.

Section 3. Definitions

“Board of Pharmacy” or “board” means the [State] Board of Pharmacy.

"Commissioner" means the Insurance Commissioner.

"Department" means the Insurance Department.

“Director” means the Medicaid Director.

"Drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them; (B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; (C) articles, other than food, intended to affect the structure or any function of the body of humans or any other animal; and (D) articles intended for use as a component of any articles specified in this subdivision; but shall not include devices or their components, parts or accessories;

"Health care plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in this state.

"Health carrier" or "Health insurer" means an insurance company, a health maintenance organization, or a hospital and medical service corporation.

"Net spending" means the cost of prescription drugs minus any discounts that lowers the price of the drugs, including, but not limited to, rebates, fees, retained price protections, retail pharmacy network spread, and dispensing fees.

"Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

"Pharmacy benefits manager" means any person that administers the prescription drug, prescription device, pharmacist services or prescription drug and device and pharmacist services portion of a health care plan offered in the state on behalf of a [HEALTH CARRIER/INSURER].

"Rebate" means any discount or concession which affects the price of a prescription drug to a pharmacy benefits manager or health [CARRIER/INSURER] for a prescription drug manufactured by the pharmaceutical manufacturer.

"Specialty drug" means a prescription drug outpatient specialty drug covered under Medicare Part D program established pursuant to Public Law 108-73, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended from time to time, that exceeds the specialty tier cost threshold established by the Centers for Medicare and Medicaid Services.

"Utilization management" means a set of formal techniques designed to monitor the use of, or evaluate the medical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings.

"Wholesale acquisition cost" means, with respect to a pharmaceutical drug or biological product, the manufacturer's list price for the pharmaceutical drug or biological product to wholesalers or direct purchasers in the United States for the most recent month for which the information is available, as reported in wholesale price guides or other publications of pharmaceutical drug or biological product pricing data, not including any rebates, prompt pay or other discounts, or other reductions in price.

Section 4. Disclosure of prescription drug pricing information.

(a)(1) Not later than January 1, 2020, and annually thereafter, each drug manufacturer shall submit a report to the [INSURANCE COMMISSIONER] no later than the fifteenth day of January, April, July, and October with the current wholesale acquisition cost information for the

United States Food and Drug Administration approved drugs sold in or into the state by that manufacturer.

(2) The commissioner shall develop a website to contain prescription drug price information submitted pursuant to subsection (a)(1) of this section. The website shall be made available on the [INSURANCE DEPARTMENT'S] website with a dedicated link that is prominently displayed on the home page, or by a separate easily identifiable internet address.

(b)(1) Not more than thirty days after an increase in wholesale acquisition cost of sixty percent or greater over the preceding five calendar years or fifteen percent or greater in the preceding twelve months for a drug with a wholesale acquisition cost of seventy dollars or more for a thirty-day supply, a pharmaceutical drug manufacturer shall submit a report to the [COMMISSIONER OF INSURANCE]. The report shall contain the following information:

(A) Name of the product;

(B) Whether the drug is a brand name or a generic;

(C) The effective date of the change in wholesale acquisition cost;

(D) Aggregate, company-level research and development costs for the prior calendar year;

(E) The name of each of the manufacturer's prescription drugs that was approved by the federal Food and Drug Administration in the previous five calendar years;

(F) The name of each of the manufacturer's prescription drugs that lost patent exclusivity in the United States in the previous five calendar years; and

(G) A statement of rationale regarding the factor or factors that caused the increase in the wholesale acquisition cost.

(2) The quality and types of information and data that a pharmaceutical manufacturer submits to the commissioner pursuant to this subsection shall be consistent with the quality and types of information and data that the manufacturer includes in their annual consolidated report on Securities and Exchange Commission Form 10-K or any other public disclosure.

(3) Within sixty days of receipt, the commissioner shall publish the report on the [INSURANCE DEPARTMENT'S] prescription drug price information website developed pursuant to subsection (a)(2) this section.

(c) A manufacturer shall notify the commissioner in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a

specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(d) The commissioner may adopt regulations to implement the provisions of this section.

Drafting Note: States may wish to raise or lower the percentages and dollar amount set forth in Section 4(b)(1) depending upon each state's economic environment as it relates to prescription drug prices.

Section 5. Disclosure of pharmacy benefit management information.

(a)(1) Not later than February 1, 2020, and annually thereafter, each pharmacy benefits manager shall file a report with the commissioner. The report shall contain the following information for the immediately preceding calendar year:

(A) The aggregated rebates, fees, price protection payments, and any other payments collected from pharmaceutical manufacturers;

(B) The aggregated dollar amount of rebates, price protection payments, fees and any other payments collected from pharmaceutical manufacturers that were passed to health [CARRIERS/INSURERS];

(C) The aggregated dollar amount of rebates, price protection payments, fees and any other payments collected from pharmaceutical manufacturers that were passed to enrollees at the point of sale; and

(D) The aggregated dollar amount of rebates, price protection payments, fees and any other payments collected from pharmaceutical manufacturers that were retained as revenue by the pharmacy benefit manager.

(2) Reports submitted by pharmacy benefit managers shall not disclose the identity of a specific health benefit plan or enrollee, the prices charged for specific drugs or classes of drugs, or the amount of any rebates or fees provided for specific drugs or classes of drugs.

(3) Within sixty days of receipt, the commissioner shall publish the report on the [INSURANCE DEPARTMENT'S] prescription drug price information website developed pursuant to subsection (a)(2) of section (4) of this Act. For any pharmacy benefit manager with fewer than five (5) clients, the commissioner shall aggregate all the collected data and publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's internet website. The data from all of the reports must be published in a

manner that does not disclose or tend to disclose proprietary or confidential information of any pharmacy benefit manager.

(b) The commissioner may adopt regulations to implement the provisions of this section.

Section 6. Disclosure of health [CARRIER/INSURER] spending information.

(a)(1) Not later than February 1, 2020, and annually thereafter, each health [CARRIER/INSURER] shall submit a report to the commissioner. The report shall contain the following information for the immediately preceding calendar year:

(A) The names of the twenty-five most frequently prescribed prescription drugs across all plans;

(B) Percent increase in annual net spending for prescription drugs across all plans;

(C) Percent increase in premiums that were attributable to prescription drugs across all plans;

(D) Percentage of specialty prescription drugs with utilization management requirements across all plans;

(E) Premium reductions that were attributable to specialty drug utilization management.

(2) Within sixty days of receipt, the commissioner shall publish the report on the [INSURANCE DEPARTMENT'S] prescription drug price information website developed pursuant to subsection (a)(2) of section (4) of this Act. The commissioner shall aggregate all the collected data and publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's internet website. The data from all of the reports must be published in a manner that does not disclose or tend to disclose proprietary or confidential information of any health [CARRIER/INSURER].

(b) Reports submitted by [CARRIERS/INSURERS] shall not disclose the identity of a specific health benefit plan or the prices charged for specific drugs or classes of drugs.

(c) The commissioner may adopt regulations to implement the provisions of this section.

Section 7. Severability

If any provisions of this Act or the application of this Act to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared severable.

Section 8. Effective Date

This Act is effective immediately.

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NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees.

NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.