BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

1310 G Street, N.W.
Washington, D.C. 20005
202.626.4800
www.BCBS.com

July 16, 2021

Representative Deborah Ferguson
Assemblywoman Pamela Hunter
Representative George Keiser
Senator Jason Rapert

Submitted via email at: wmelofchik@ncoil.org

Re: NCOIL Model - Accumulator Adjustment Program Model Act

Dear Assemblywoman/Committee Chair Hunter, Representatives Ferguson and Keiser, and Senator Rapert:

The Blue Cross Blue Shield Association (BCBSA) appreciates the opportunity to provide comments on the proposed National Council of Insurance Legislators' (NCOIL) "Accumulator Adjustment Program Model Act."

BCBSA is a national federation of 35 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies that collectively provide health care coverage for one in three Americans. For more than 90 years, BCBS companies have offered quality health care 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.

While BCBSA is aligned with NCOIL's overarching goal to improve consumer affordability of prescription drugs, we strongly urge that the model act not be adopted in its current form without further amendments focusing on creating greater transparency into prescription drug pricing and financial assistance. A common tactic drug manufacturers use when setting prices that are unaffordable for patients is to offer copay coupons, vouchers, discounts or payments to offset cost-sharing expenses (collectively, "copay coupons") to hide the actual cost of those drugs.[1] And while the patients' financial exposure at the drug counter may be blunted as a result, the high costs of these drugs get passed on through the system in the form of higher premiums for all down the line. Restricting the option for insurers and employers to apply accumulator programs would lead to higher drug prices for consumers by limiting payers' ability to negotiate lower net prices with drug manufacturers. Manufacturers have less incentive to negotiate lower prices with insurers if they can forego seeking preferred placement on an insurer's formulary and instead offer coupons directly to consumers.

At a time when prescription drug spending continues to rise at alarming rates, this model act would undermine the operation of long-standing medical management tools such as formulary design and cost-sharing tiers which are designed to lower the total cost of care for both insured members and the health care system. In fact, the act would further induce utilization of higher-cost drugs even when clinically appropriate, lower-cost medicines are accessible to the consumer.

[1] *Modern Healthcare,* "Drug companies fight generics with coupons," June 11, 2016, available at: https://www.modernhealthcare.com/article/20160611/MAGAZINE/306119980/drug-companies-fight-generics-with-coupons.

If the sponsors and members of the Health Insurance & Long Term Care Issues Committee decide to move forward with a model act, we ask that the committee revise the act to improve manufacturer transparency of prescription drug pricing and prescription drug financial assistance by all third parties. Transparency measures would improve policymakers' and the general public's understanding of the nature of these financial assistance programs and their total cost to the health care system.

The True Cost of Coupons and the Value of Copay Accumulator Programs

Some drug manufacturers provide patients with discount coupons to help offset patients' out-of-pocket costs for medication. While these discounts help individual patients, they, in fact, promote the use of higher-cost drugs even when less expensive, equally effective drugs are available. Though coupons lower the cost for some patients, they have much larger, negative consequences to a larger group of patients through the entire market:

- Coupons mask the actual cost of brand-name medications by shifting the high price from one individual to all individuals.
- Coupons encourage patients to use more expensive, brand-name drugs instead of equally effective, far less expensive generics.
- Coupons undermine tools, such as formularies, that employers, states and health plans rely on to maintain lower costs for all health care consumers.

While coupons may help individuals, these manufacturer programs raise premiums for all enrollees and increase the cost of coverage for payers, including state and local governments, which can lead to larger system-wide affordability barriers. One study estimates that coupon use increased the percentage of prescriptions filled with brand-name formulations by more than 60 percent. As a result, the study estimated that national spending on drugs, on average, grew by $30 million to $120 million for each copayment coupon for a particular drug over a five-year period following the entry of generic competitor drugs.[2] The federal government considers copay coupons to be an illegal kickback if used by an enrollee in Medicare or Medicaid because they induce a patient to use a specific drug.[3]

Today, price negotiation and formulary tiers are considerable tools insurers use to rein in drug prices for patients. Unfortunately, manufacturer coupons are often used as a means to circumvent pharmacy benefit tools that encourage consumers to select lower-cost medicines and make health insurance more affordable. Accumulator programs help to balance the effect of manufacturer assistance and restore the ability of health plans to provide access to lower cost and effective medicines.

It is important to note how copay accumulator programs interact with the pharmacy benefit and patient access to prescription drugs. If a health plan has an accumulator program in place, it does not prevent a patient from using a manufacturer coupon. Consumers still are able to use the value of the coupon at the pharmacy counter to reduce any cost-sharing amount. If an accumulator program is in place, the member would need to meet their deductible or cost-sharing once the manufacturer assistance expires – just as all members must do who have a deductible or cost-sharing.

[2] *The New England Journal of Medicine*, "Undermining Value-Based Purchasing — Lessons from the Pharmaceutical Industry". Nov. 2016. Web. http://www.nejm.org/doi/full/10.1056/NEJMp1607378?query=featured_home&

[3] *See 42* U.S.C § 1320a-7b; *Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons*.

The Centers for Medicare & Medicaid Services (CMS) also has explicitly allowed accumulator programs to continue in the commercial markets as part of their efforts to combat the high, and rising, out-of-pocket costs for prescription drugs. In doing so, CMS recognized the "market distortion effects related to direct drug manufacturer support amounts when consumers select a higher-cost brand name drug over an equally effective, medically appropriate generic drug."[4]

Moreover, by allowing third-party assistance (the vast majority of which is attributed to prescription drug manufacturer coupons) to count towards patient out-of-pocket spending, the model act could exacerbate equity issues considering that other types of patients with health needs whose costs are not driven by medication spending would be unlikely to directly benefit from this proposal. Despite these concerns, we do not oppose third-party support in the commercial market, so long as health insurers providing coverage for businesses and families can continue to utilize accumulator adjustment programs as a tool to balance the distorting effect of such support: higher costs and premiums.

Transparency and Reforms are Needed for Third-Party Financial Assistance

As an alternative approach to the model act, BCBSA recommends that the sponsors increase transparency of third-party financial assistance, especially for prescription drug coupons. Use of coupons has skyrocketed from $1 billion in 2010 to $7 billion in 2015.[5] However, requiring drug manufacturer reporting would help provide clarity of the scope and effects of coupon assistance on the health care system (e.g., total costs, premium growth, utilization of lower-cost generics) and would assist with tracking year-over-year trends. An Oregon bill (SB 560) represents one approach to increase transparency for the committee's consideration.

At the same time, we agree that more education and consumer engagement are needed to help the small percentage of plan enrollees who may be affected by accumulator programs. This education includes how an accumulator program operates and affects patient cost-sharing liability (consistent with the terms of their policy or plan) and to proactively identify lower-cost therapeutic alternatives. We would be open to a discussion with the Committee around these and additional strategies to increase consumer education about the intent and purpose of accumulator adjustment programs while preserving the ability to offer them.

We would like to thank you for your consideration to our comments. If you have any questions, please do not hesitate to contact Randi Chapman at Randi.chapman@bcbsa.com or Paul Eiting at paul.eiting@bcbsa.com.

Sincerely,

Clay S. McClure
Executive Director, State Relations
Blue Cross Blue Shield Association

[4] *Notice of Benefit and Payment Parameters for 2021*. Centers for Medicare & Medicaid Services. June 13, 2020. Available at https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10045.pdf.

[5] *Modern Healthcare,* "Drug companies fight generics with coupons," June 11, 2016, available at: https://www.modernhealthcare.com/article/20160611/MAGAZINE/306119980/drug-companies-fight-generics-with-coupons.