

Date: March 9, 2018	POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS	 OF NORTHERN LARIMER COUNTY
Staff: Alyson Williams		

HB18-1097: PATIENT CHOICE OF PHARMACY

Concerning the ability of a person eligible for prescription drug benefits to choose the pharmacy at which to fill a prescription drug order.

Details

Bill Sponsors:	House – <i>Catlin (R) and Danielson (D)</i> Senate – <i>Coram (R) and Todd (D)</i>
Committee:	Senate Committee Not Yet Assigned
Bill History:	2/23/2018- House Third Reading Passed-No Amendments
Next Action:	Introduction in Senate-Assignment to Committee

Bill Summary

The bill prohibits health insurance carriers and pharmacy benefits managers (PBMs) from imposing certain restrictions on patients, pharmacists, and pharmacies. First, they cannot place restrictions on which pharmacy or pharmacist covered individuals use to access their benefits. Fees cannot be imposed on the individual for utilizing the pharmacy of their choice. The carrier or PBM cannot impose any other conditions on the individual, pharmacist, or pharmacy that impede an individual's choice on which pharmacy to select. Finally, the bill mandates that pharmacies and pharmacists cannot be denied being a part of a carrier's network if they are licensed in Colorado and meet certain conditions.

Issue Summary

The Roles of Carriers & Pharmacy Benefit Managers

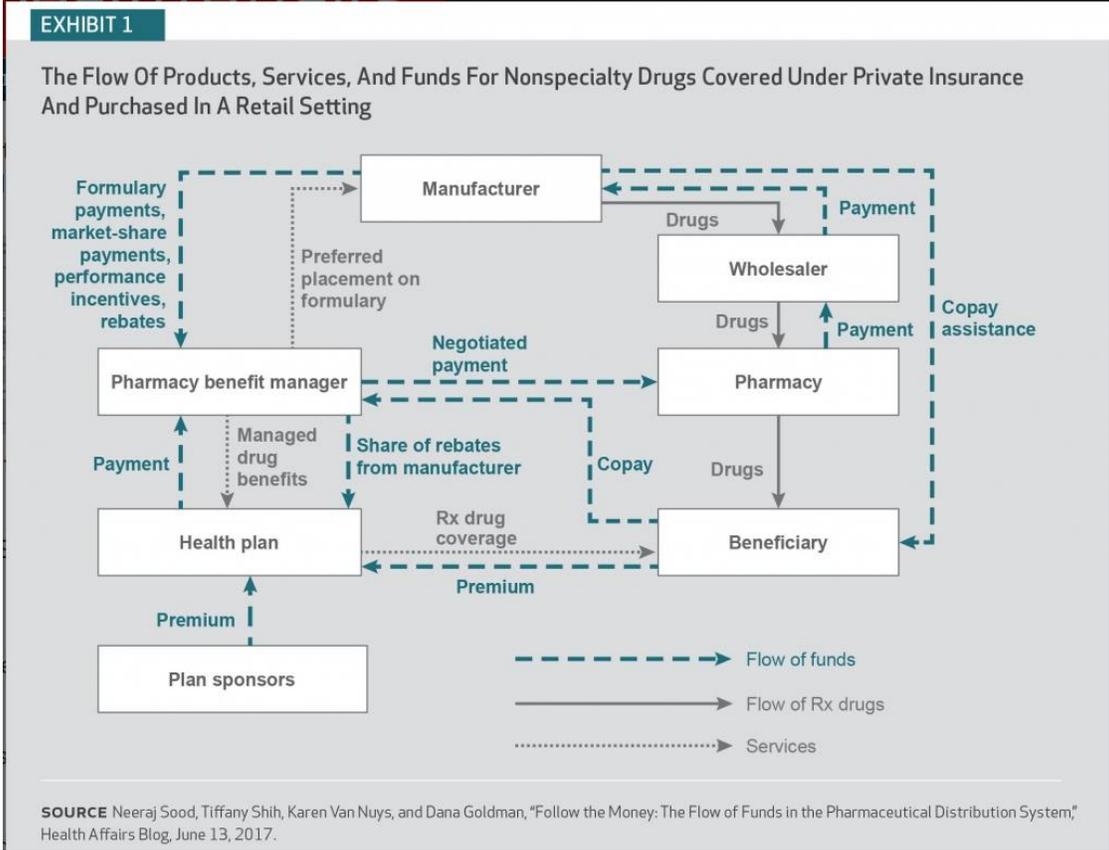
Pharmacy benefit managers (PBM) can represent a variety of different types of health plans (i.e. private carriers, self-insured employers, union health plans, or government purchasers) in both the purchase and distribution of pharmaceutical products.¹ PBMs can influence what products are utilized and set the rates that pharmacies are reimbursed for their services in the supply chain. These entities play a central financial role in the pharmaceutical market. With the volume of the clients they serve, they can leverage those numbers to negotiate rebates and other discounts from manufacturers. Not only do PBMs create these relationships with manufacturers, but they also create networks of pharmacies with whom they negotiate reduced dispensing fees.²

Instead of relying on PBMs, some health insurance plans opt to manage their own pharmacy networks to negotiate dispensing fees. The main role of health insurance carriers in this system is to determine the pharmacy benefit for covered individuals. The pharmacy benefit includes information on which drugs are covered, which require prior authorization reviews, and the amount of cost-sharing that will be required for these products.

¹ Health Affairs (Sept. 14, 2017). *Pharmacy Benefit Managers*. Retrieved from DOI: 10.1377/hpb20171409.000178

² Dispensing fees compensate a pharmacy for transferring the product to the patient, any overhead fees (i.e. stocking/storing medications), and patient counseling.

The following figure demonstrates how pharmaceutical products and funds are distributed through the market when a person is covered by private insurance and accesses services through a retail pharmacy.



What governs the adequacy of a network or what specifically should be included is frequently dependent on what a state has in statute or agency rules.³ The National Association of Insurance Commissioners (NAIC) has model legislation for states to use as a benchmark for what constitutes network adequacy. However, neither this NAIC model or the Affordable Care Act (ACA) have addressed network components such as minimum geographic distances.³

Any Willing Provider/ Freedom of Choice Laws

Any willing provider (AWP) and freedom of choice (FOC) laws have multiplied across the United States in recent years. These laws intend to address opportunities for pharmacies to compete and consumers to seek quality service. AWP laws allow any provider to join a carrier’s network if they are willing to accept the reimbursement that the carrier provides to those within their network.⁴ The FOC laws target the consumer, allowing them to choose any provider they want to receive reimbursable services, regardless of their participation in a carrier’s or PBM’s network. As of 2014, 27 states had some sort of AWP law, ranging in scope from all licensed medical professionals to just certain professions, like pharmacists.⁵ In 2015,

³ Barlas, S. (2015). Insurance Companies Struggle to Balance Medical and Pharmacy Networks: Cost and Access Are Often at Odds; Enrollees Are Caught in the Middle. *Pharmacy and Therapeutics*, 40(1), 41–72. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4296591/#b5-ptj4001041>

⁴ Klick, J. & Wright, J.D. (2015). The Effect of Any Willing Provider and Freedom of Choice Laws on Prescription Drug Expenditures. *Faculty Scholarship*. Retrieved from <https://pdfs.semanticscholar.org/05d8/6ffa6a7c719e2e960616e12fdf9af1955720.pdf>

⁵ National Conference of State Legislatures. (Nov 2014). *Any Willing or Authorized Providers*. Retrieved from <http://www.ncsl.org/research/health/any-willing-or-authorized-providers.aspx>

approximately 18 states had some sort of FOC law in statute that applied to at least one health care profession.⁴ It is possible to enact both FOC and AWP laws or just have one in statute.

This Legislation

This bill sets forth requirements on the actions of health insurance carriers and pharmacy benefit managers (PBMs) that manage pharmacy benefits for carriers. First, these entities cannot put limitations on where covered individuals choose to access pharmacy services if the pharmacy/pharmacist has signed a contract with the carrier/PBM and is licensed according to Colorado statute. Copayments, fees, and other requirements of cost-sharing required for a person to select a pharmacy must be uniform across the state of Colorado, no matter if the pharmacy is in-network or out-of-network. The bill prohibits carriers and PBMs from imposing other conditions on the individual, pharmacist, or pharmacy that could limit the ability for the individual to choose which pharmacy to utilize. The carriers and PBMs cannot deny a pharmacist or pharmacy the right to be in a pharmacy network contract or be a contracting provider if they are licensed in Colorado, accept the terms offered, and provide pharmacy services that meet state and federal law.

All of the aforementioned mandates do not apply to pharmacy services in four specific situations: for care provided in inpatient or emergency medical settings, a managed care plan carrier⁶, a self-funded plan exempt from state regulation⁷, and a plan for state or federal employees.

Reasons to Support

This legislation would be a dual-pronged approach as it mandates both AWP and FOC concepts. This would allow for increased access for consumers and increased competition between pharmacies. The AWP portion of the bill would allow for smaller community pharmacies to compete with larger retail pharmacies that are typically in a carrier's network. This could allow independent and community pharmacies to remain in the market. The increased competition could decrease prices for consumers while increasing the quality of service these pharmacies offer.

Additionally, proponents argue that this can improve consumer a greater voice in their health care by granting them a variety of pharmacies where they can access their pharmacy benefits. The FOC section of the bill would allow consumers to access services in the pharmacy of their choice. This could make care more convenient and increase the number of scripts filled by patients.

Supporters

- Association of Colorado Centers for Independent Living
- Colorado Organizations Responding to AIDS
- Colorado Pharmacists Society
- Colorado Rural Health Center
- Colorado Senior Lobby
- Healthier Colorado
- National Federation of Independent Business
- One Colorado
- RxPlus Pharmacies
- The ARC of Colorado

Reasons to Oppose

Opponents argue that this bill could result in higher costs for the consumer. The role of PBMs is to negotiate rebates from manufacturers and decreased costs from pharmacies. Some assert this would undermine their function and increase the cost of pharmaceutical products. Research has demonstrated that AWP/FOC laws

⁶ Must provide a majority of covered professional services through directly employed providers or a single contracted medical group.

⁷ Pursuant to ERISA, such as Association Health Plans.

have a statistically significant effect on increasing drug expenditures.⁴ Staff from the Federal Trade Commission have commented that AWP/FOC laws decrease competition from the market, which could diminish cost-savings.⁸ With less cost-savings, the consumer could bear the brunt with more expensive pharmaceutical services. The health care market has become more consolidated over the past decade, resulting in decreasing competition; exacerbating this reduction in competition through state regulation could have a detrimental effect on health care expenditures.⁹ AWP laws are intended to benefit the consumer, but interfering with insurer discretion to design networks that are working towards improved quality while reducing costs could result in detrimental effects for the consumer. Although the FOC section of the bill mandates that the insurers implement consistent fees, copayments and other cost-sharing requirements across the state, it does not bar the entity from increasing those rates. Therefore, if a patient already accesses an in-network pharmacy they could see those payments increase to cover the costs that could be associated with providing coverage to those who choose to go to a pharmacy that used to be out-of-network.

Opponents

- Aetna
- America’s Health Insurance Plans
- Anthem
- Cigna
- Colorado Association of Health Plans
- Colorado Competitive Council
- CVS Health
- Denver Metro Chamber of Commerce
- Express Scripts
- Novartis

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.

⁸ United States Federal Trade Commission & Antitrust Division of the U.S. Department of Justice (2014). *Competition Issues in the Distribution of Pharmaceuticals*. Retrieved from https://www.ftc.gov/system/files/attachments/us-submissions-oecd-other-international-competition-fora/pharmaceuticals_us_oecd.pdf

⁹ Gaynor, M, Mostashari, F., and Ginsburg, P.B. (April 13, 2017). *Making health care markets work: Competition policy for health care*. Retrieved from <https://www.brookings.edu/research/making-health-care-markets-work-competition-policy-for-health-care/>