Health District
OF NORTHERN LARIMER COUNTY

3/8/2019

STAFF: ALYSON WILLIAMS POLICY ANALYSIS

HB19-1131: PRESCRIPTION DRUG COST EDUCATION

Concerning a requirement to share the wholesale acquisition cost of a drug when sharing information concerning the drug with another party.

Details

Bill Sponsors:	House – *Jaquez Lewis (D)* Senate – *Winter (D)*
Committee:	House Health & Insurance Senate Health & Human Services
Bill History:	1/25/2019- Introduced- Assigned to House Health & Insurance 2/20/2019- House Health & Insurance Refer Amended to House Committee of the Whole 3/1/2019- Second Reading in House- Passed with Amendments 3/4/2019- Third Reading in House- Passed 3/7/2019- Introduced in Senate- Assigned to Health & Human Services
Next Action:	Hearing in Senate Health & Human Services
Fiscal Note:	2/13/2019 Version

Bill Summary

The bill requires a drug manufacturer or their representative to provide in writing the wholesale acquisition cost of a prescription drug to a prescriber when they are sharing other information about that drug. Also, the bill requires the manufacturer or their representative to provide the names and wholesale acquisition costs of at least three generic drugs from the same therapeutic class as the prescription drug.

Issue Summary

Wholesale Acquisition Cost

Also known as list price, the wholesale acquisition cost (WAC) is similar to a suggested retail price created by the manufacturers for wholesalers or direct purchasers and is only occasionally relevant to the pricing of both generic and brand-name drugs.[1] Thus, the WAC is not based on any actual sales of a drug. It is defined in federal Medicaid statute as "the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates, or reductions in price."[2] The WAC serves as a basis for negotiations between entities in the supply chain.

Marketing Drug Products to Prescribers

"Detailing" is a marketing approach that relies on face-to-face promotional activities that are directed to prescribers and pharmacy directors.[3] This typically includes a visit from the manufacturer's representative to the prescriber to pitch a specific product.

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[1] Meador, M. Squeezing the Middleman: Ending Underhanded Dealing in the Pharmacy Benefit Management Industry through Regulation.
[2] 42 USC § 1395w-3a(c)(6)(B)
[3] Pew Trusts (Nov. 11, 2013). *Persuading the Prescribers: Pharmaceutical Industry Marketing and its Influence on Physicians and Patients.* Retrieved from https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2013/11/11/persuading-the-prescribers-pharmaceutical-industry-marketing-and-its-influence-on-physicians-and-patients

Role of Prescribers

Of respondents from organizations (i.e. executives, clinical leaders, and physicians) that are directly involved in health care delivery, 72 percent said that the out-of-pocket cost for the patient enters into clinical decisions at their organization.[4] However, 86 percent agreed that physicians are not trained to discuss the cost of care. Another study has found that giving formulary and drug cost information to providers was associated with lower increases in total drug costs, but not with increased adherence or decreases in out-of-pocket costs.[5] When teaching hospitals put restrictions on the activities of pharmaceutical sales representatives in their facilities, the doctors within those hospitals tended to order fewer promoted brand-name drugs and used more generic versions instead.[6]

This Legislation

When a manufacturer or the representative, agent, or employee of a manufacturer, who, while employed by or under contract to represent the manufacturer, engages in prescription drug marketing, they are to provide a prescriber, in writing, the WAC of a prescription drug when providing other information concerning the drug to the prescriber. When providing this information, the manufacturer or their representative is to also disseminate the names and WACs of at least three generic drugs from the same therapeutic class. If three are not available, they are to provide as many as are available for prescriptive use.

In this bill, a "prescriber" is defined as a health care provider that is licensed by the state and authorized to prescribe controlled substances or prescription drugs. "Prescription drug marketing" is defined as any activity that may include in-person meetings, physical mailings, telephone conversations, video conferencing, e-mails, texting, or faxes that provide educational or marketing information or materials regarding a prescription drug. The bill defines a "therapeutic class" as a group of similar drugs that have the same or similar mechanisms of action and are used to treat a specific condition.

The entirety of this language is repeated in a second section that only takes effect on October 1, 2019, only if HB19-1172, which proposes to recodify and reorganize Title 12 of the Colorado Revised Statutes, is passed and signed into law. The first section of the bill is included in case HB19-1172 does not pass.

Fiscal Note

Legislative Council Staff asserts that this bill will require a minimal increase in workload for the State Board of Pharmacy to perform rulemaking, which can occur within existing appropriations.

Reasons to Support

Prescribers can compare the brand-name drug WAC to therapeutically similar generics to determine if a lower cost generic may be more appropriate to prescribe to their patient(s). This may give prescribers a tool for considering cost and possible affordable alternatives while prescribing drug products.

Supporters

- AARP
- America's Health Insurance Plans
- Boulder County
- Center for Health Progress
- Colorado Association of Health Plans
- Colorado Consumer Health Initiative
- Colorado Cross-Disability Coalition
- Colorado Foundation for Universal Health Care

[4] University of Utah (July 2018). Buzz Survey Report: Cost of Care and Physician Responsibility. *NEJM Catalyst.* Retrieved from https://catalyst.nejm.org/buzz-survey-university-of-utah-health-1-cost-care/

[5] Tseng, C., et al. (Sept. 2016). Giving formulary and drug cost information to providers and impact on medication cost and use: a longitudinal non-randomize study. *BMC Health Serv Res, 499*(16). DOI: 10.1186/s12913-016-1752-4

[6] Larkin I, Ang D, Steinhart J, et al. Association Between Academic Medical Center Pharmaceutical Detailing Policies and Physician Prescribing. JAMA. 2017;317(17):1785–1795. doi:10.1001/jama.2017.4039

- Colorado Medical Society
- Colorado Pharmacists Society
- RxPlus Pharmacies

Reasons to Oppose

The contracts between manufacturers and wholesalers and between wholesalers and pharmacies tie payment to WAC, but negotiated rebates frequently lower the actual price of a drug substantially below WAC. Negotiated rebates vary significantly by product, as well as by health plan or pharmacy. For example, a plan's formulary may consist of four tiers: preferred generics (tier 1), preferred brands (tier 2), non-preferred brands and generics (tier 3), and specialty (tier 4). A drug on a higher tier typically has a higher cost-sharing requirement for the consumer. Under this proposal, a prescriber may choose a therapeutically similar generic that was noted by a manufacturer representative because the WAC was lower than the WAC for the brand-name drug. However, under the patient's health plan the brand-name drug is on tier 2 while that particular generic is a non-preferred drug on the formulary and placed on tier 3. That could mean the patient ends up paying more for that generic than they would have for the brand-name drug.

Opponents

- Astellas Pharma
- Bayer
- Bristol-Myers Squibb
- Colorado Bioscience Association
- Colorado Chamber of Commerce
- Gilead Sciences
- Merck
- Novartis
- Otsuka America Pharmaceuticals
- Pfizer
- Pharmaceutical Research Manufacturers of America (PhRMA)
- Sanofi

Other Considerations

It is important to note that many provider groups and health systems do not allow for manufacturers or their representatives to detail their employees; in September 2013, the Federal Physician Payment Sunshine Act went into full effect. The transparency requirements of the Act prompted physician practices and hospitals to severely restrict pharmaceutical representatives' direct access to their physicians. Therefore, there are large amounts of providers that would not be getting the information regarding the WAC of a brand-name drug or therapeutically similar generics. They may still get marketing information through mailings, e-mails, faxes, but the extent of this indirect education is unknown.

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. This analysis is accurate to staff knowledge as of date printed. 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.