

Governor’s Health Care Cabinet

Legislative and Administrative Initiatives Review

Work Group Report

Summary of

Selected Pharmaceutical Cost Provisions From Other States

This report gives highlights of several recent state laws, unpassed bills or ballot propositions which are targeted at the high cost of pharmaceuticals. There are many other state legislative initiatives around the country. The provisions highlighted here were selected based on subjective criteria including the possibility of passage – *i.e.*, a demonstrated level of traction or success in the public or legislative arena (such as bills that may have passed a state legislature but were vetoed by the governor) – as well as considerations such as the practicality of implementation and potential impact. These judgments are subjective, but are informed by extensive consultation with non-partisan expert organizations, notably the National Academy of State Health Policy (NASHP) and the National Conference of State Legislatures (NCSL), and this work group thanks both organizations for their assistance.

We have divided the highlighted provisions into two main categories. The first category is transparency: provisions that require or encourage the dissemination of information around drug prices and financial arrangements (including rebates) anywhere in the supply chain to either the public, policymakers/regulators, or a third party. The second category is pricing or cost regulation: provisions that involve not just transparency, but some form of active price control, review, or price-setting.

Because of the lack of federal action on pharmaceutical pricing and costs, the issue of drug costs is at the top of the agenda in many states across the country, and there are many worthwhile proposals other than the ones highlighted here. Thus, we are also providing for the Health Care Cabinet’s consideration several separate resources – documents such as white papers, lists or searchable databases of state initiatives – created by other organizations, such as NASHP, discussing or listing many other state provisions targeted to the high cost of pharmaceuticals. These documents and other resources are listed below, and several particularly key resources are included in this packet.

Major New State Drug Cost Laws or Passed Bills

I. Transparency Measures

California

- S.B. 17 (law passed)
 - Requires companies to notify health insurers and government health plans 60 days prior to raising prices for a particular drug more than 16 percent over a two-year period. Limited to drugs with wholesale acquisition costs over \$40 per episode
 - Manufacturer must justify the increase
 - Health plans must report the percentage of premiums spent on prescription drugs.
 - Data will include information on how the drug price contributes to premium increases
 - Effective date: Jan. 1, 2019
 - Information public: All provided information will be made public
 - Litigation: None known

Nevada

- S.B. 539 diabetes drug transparency (law passed; Ch. 592)
 - Require PBMs to reveal rebates they get on diabetes drugs such as insulin;
 - Manufacturers & PBMs must report certain costs/profits information
 - Gag clause prohibition: forbids PBMs from preventing pharmacists discussing lower-cost options with consumers
 - Non-profits such as patient advocacy organizations must disclose funding from manufacturers, PBMs and insurers
 - PBMs now have fiduciary responsibility to insurers
 - Effective date: different provisions various effective dates from June 15, 2017 to January 1, 2018
 - Information public: Yes. (Some information is aggregated and/or de-identified)
 - Litigation: Yes (PhRMA & Biotech)

Pennsylvania

- H.B. 1464 (did not pass)
 - Requires data reporting on factors that affect a drug's Wholesale Acquisition Cost
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- Calculate financial impact of high drug costs by tracking avoidable medical costs, such as for interventions and hospitalizations caused by patients' inability to afford prescription drugs

Multiple states

- Provisions re determining “excessive” costs (MA SB 652; NJ S. 3088; NY A 5733, OR HB 2387)
 - Bills would establish a body (commission or board, *etc.*) to act on behalf of the state with the authority to determine excessive prices or otherwise make recommendations about drug prices based on data reported by manufacturers

II. Pricing/Cost Measures

California (see Ohio)

- Calif. Proposition 61 (2016; proposition failed)
 - Would have barred the state from spending more on a prescription than the lowest price paid by the U.S. Dept. of Veterans Affairs.

Maryland

- H.B. 631 Price-gouging law (May 2017)
 - Medicaid must notify Attorney General when off-patent or generic drugs experience excessive price increases (50% or more in one year); penalties if increases not justified
 - Drug must cost more than \$80 for one-month supply
 - Information public: No
 - Effective date: Oct. 1, 2017
 - Litigation: yes (generic drug makers; Judge allowed it to take effect Oct. 1, 2017)

New York

- Section 280 Public Health Law
 - Medicaid drug spending capped at medical inflation plus 5%
 - Requires review of clinical benefit vs. costs
 - Dept. of Health to negotiate enhanced rebates with manufacturers if cap is exceeded
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- Link to explainer by state Dept. of Health (August 31, 2017):
https://www.health.ny.gov/health_care/medicaid/regulations/global_cap/docs/2017-8-29_medicaid_drug_cap.pdf
- Effective date: Unknown but presumably on passage (April 2017) (law is being implemented currently)
- Litigation: Need to clarify but believe there is litigation

Ohio (see California)

- Issue No. 2: Proposition similar to Calif. Proposition 61 (failed, Nov. 7, 2017)
 - Would have barred the state from spending more on a prescription than the lowest price paid by the U.S. Dept. of Veterans Affairs.

Vermont

- Act 165
 - 2016 legislation requires manufacturers to justify price increases determined to be driving up spending in state programs, such as Medicaid.
 - Manufacturers must report drugs with price increases of 15% in one year, or 50% over five years. Requires the state to identify up to 15 drugs that account for significant state spending and which have seen price increases of either 50 percent over five years or 15 percent over one year. Manufacturers of those products have to submit price increase justifications to the Attorney General and that information will be made public.
 - Information public: Yes
 - Effective date: June 2, 2016
 - Litigation: unknown

III. Administrative Measures:

Louisiana

- Invoke federal patent law exception for the public interest for Hepatitis C treatments (May 2017 reports that state health secretary seeking advice from health law experts)
 - Proposal to invoke obscure 1910 federal law to allow U.S. to procure generic versions of expensive Hepatitis C drugs. (This federal law, 28 U.S.C. § 1498, allows government when it is in the public interest to itself manufacture or procure patented goods from a third party like a generic drugmaker, so long as the government pays “reasonable” compensation to the patentholder.)
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IV. Additional resources:

Spreadsheets & Other Compilations of State initiatives

- *State Legislative Action on Pharmaceutical Prices*, NASHP’s Pharmacy Cost Work Group (updated November 3, 2017)
 - Link: <http://nashp.org/state-legislative-action-on-pharmaceutical-prices/>
 - Link to 2017 state legislative action worksheet: <http://nashp.org/wp-content/uploads/2016/09/Rx-Legislative-Tracker-11.3.171.pdf>
 - Link to 2015-2016 state legislative action worksheet: <http://nashp.org/wp-content/uploads/2016/09/2016-Rx-Legislation-Tracker.pdf>

- *Prescription Drug State Database – 2015-2017 State Legislation on Prescription Drugs*, National Conference of State Legislatures (updated October 23, 2017)
 - Link: <http://www.ncsl.org/research/health/prescription-drug-statenet-database.aspx>

- *Curbing Unfair Drug Prices – A Primer for States*, Global Health Justice Partnership Policy Paper, Yale Law School, Yale Sch. Of Public Health, Natl. Physicians Alliance, Universal Health Care Foundation of Connecticut, (August 2017) (this is also a White Paper; see Appendix for legislation spreadsheet)
 - Link: https://law.yale.edu/system/files/area/center/ghjp/documents/curbing_unfair_drug_prices-policy_paper-080717.pdf

White Papers and Other Resources:

- *Lowering Drug Costs: Transparency Legislation Sets Off Flurry of New State Approaches*, Trevor Flynn & Jerin Phillip (NASHP State Health Policy Blog, August 2017)
 - Link: <http://nashp.org/lowering-drug-costs-transparency-legislation-sets-off-flurry-of-new-state-approaches/>

 - *States and the Rising Cost of Pharmaceuticals: A Call to Action*, NASHP’s Pharmacy Cost Work Group (October 2016)
 - Link: <http://nashp.org/wp-content/uploads/2016/10/Rx-Paper.pdf>
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