

19



PHARMACISTS SOCIETY OF THE STATE OF NEW YORK

TESTIMONY

JOINT LEGISLATIVE BUDGET HEARING

HEALTH AND MEDICAID

FEBRUARY 16, 2017

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Honorable Finance Chairs Senator Young and Assemblyman Farrell, Senator Hannon, Assemblyman Gottfried and distinguished members,

My name is Russell Gellis. I am a practicing pharmacist in Manhattan and the owner of Aphorpe Pharmacy. I currently serve as President of the Pharmacists Society of the State of New York. Joining me is Roger Paganelli, the Board Chair.

The Pharmacists Society is a 139-year old statewide organization with regional affiliates throughout New York. The Society represents the interests of more than 25,000 licensed pharmacists who practice in a variety of settings. Most of PSSNY's members are community pharmacists. Many are independent pharmacy owners.

Thank you. We begin by thanking leaders and individual Senate and Assembly members for the support you have demonstrated for pharmacists and local pharmacies.

Medicaid Budget Proposals: More Smoke and Mirrors

The CMS Covered Outpatient Drug Final Rule requires that as of April first this year pharmacies will be paid at an Actual Acquisition Cost (AAC) methodology for drugs plus a new professional dispensing fee. The Rule includes the additional stipulation that pharmacy reimbursement as a whole should be fair: payments are to be consistent with efficiency, quality of care and assure access. *Nothing in the CMS requirement suggests that realigning the reimbursement formula means the reduction in per prescription payment levels.*

New Actual Acquisition Cost (AAC) methodology

The Centers for Medicaid and Medicare (CMS) conducts a national survey of prescription drug costs called National Average Drug Acquisition Cost (NADAC), and considers NADAC to meet the AAC requirement. NADAC is a weekly survey updated monthly. CMS accepts NADAC as meeting the AAC requirement. New York plans to pay pharmacies at NADAC.

Use of NADAC is concerning.

- For some independents, (NADAC) payment at a national average cost will be below their dead net cost.
- NADAC costs will never be current due to price increases.
- NADAC represents a deep cut in payment to pharmacies for prescription drugs.

DOH proposes a new fee of \$10 that is unreasonable, inadequate and unsustainable.

The CMS final rule replaces the dispensing fee with a new professional dispensing fee, reinforcing CMS's position that the fee to dispense a drug reflects both the pharmacist's cost to dispense and the professional services.

The CMS final rule makes this year's final state budget especially critical.

To determine the new professional dispensing fee, CMS instructs states to conduct their own surveys or to adapt survey results from other states. In monthly meetings and written follow-up letters to the Department, the associations supplied the Department with copies of recent cost of dispensing surveys conducted in North Dakota and Missouri that found the cost of dispensing to be \$12.46 and \$12.99 respectively. The Department chose to stand by its own 2012 survey that was deeply flawed and soundly rejected by the legislature.

By any reasonable standard, the fee in New York should be higher than the fee paid in other states to take into account New York's high taxes and business costs as well as the new mandatory minimum wage.

We are very concerned about the viability of independent community pharmacies and the patients they serve having access to high-priced brand name medications that do not have generic equivalents (i.e. HIV, Hepatitis C, transplants, MS, diabetes, cancer and epilepsy). New York City pharmacies, in particular, have a much higher cost of doing business and tend to treat underserved communities with a high incidence of these diseases, therefore a high percentage of prescriptions they dispense are high-cost brand name drugs. The proposed Actual Acquisition Cost plus a \$10 fee is grossly inadequate. The proposal will have a severe impact on independent pharmacies across the state and in particular the five boroughs of New York City.

It is important to reiterate that the Department of Health did not conduct a recent up-to-date cost of dispensing survey. They relied on the flawed 2012 survey that was rejected by the legislature. If the Department had conducted its own current survey or adjusted the results of the recent surveys in the other states, the results would show that the \$10 fee is completely inadequate. Pharmacies must have a much higher fee to continue to serve their communities.

The Department's conclusion that its Medicaid proposal will cost the state \$11 million is deceptive in that \$9.5 of the \$11 million has to do with OTC items for which the department has historically underpaid pharmacies. CMS requires that the state either does its own current updated cost of dispensing survey or uses the data from recently approved cost of dispensing surveys done in another state adjusted for the cost of doing business in New York. The Department of Health has done neither. This proposal represents a steep cut in reimbursement to pharmacies and is unacceptable.

We are committed to working with the legislature to determine a new, fair professional dispensing fee that is consistent with quality of care and will assure patients in communities throughout the State of New York access to the medications they need.

The Pharmacists Society strongly supports the Governor's three-pronged approach to controlling high prescription drug costs:

- Licensing and regulating Pharmacy Benefit Managers
- New York State setting benchmark prices on high cost drugs
- Surcharges on manufacturers of high priced drugs that are sold in the private market that exceed the benchmark prices set by New York State

PBM registration and licensing

The big three Pharmacy Benefit Managers (PBMs) control approximately 70% of covered lives in the United States.

PBMs are middlemen who began as claims processors but have evolved into a multi-billion dollar industry responsible for raising the cost of prescription drugs for patients, health plans and the State of New York.

PBMs raise drug costs by extracting rebates from pharmaceutical manufacturers for formulary positioning. As a result manufacturers are forced to increase drug prices to offset rebates they anticipate paying to pharmacy benefit managers.

PBMs often keep a significant portion of manufacturer rebates that is not always transparent to their clients who are the payers, i.e. health plans, insurers and large employers.

This lack of transparency negatively impacts consumers who are uninsured or have high deductible policies as well as unions, employers, health plans and any others who don't have full access to the rebates.

The budget proposal requires PBMs to report on an annual basis financial arrangements and other benefit for promoting certain drugs to the department of Financial Services, under penalty of perjury. These disclosures will begin to unveil the hidden costs and profit center of the PBMs that ultimately increase the cost of prescription drugs to consumers, health plans and the State of New York.

The proposal will also shine a light on the unfair business practices of large PBMs under the guise of cost containment. PBMs have repeatedly ignored pro-consumer laws and policies. For example, in 2012 Governor Cuomo signed a law intended as a guarantee that consumers would never be forced into mandatory mail order, but the PBMs take advantage of loopholes in the law. As a result, many New Yorkers are still being forced to get their prescriptions from a mail order pharmacy that the PBM happens to own.

For these reasons, the Society strongly supports and wholeheartedly recommends that the Pharmacy Benefit Management regulation and licenses are included in the final state budget. We find no compelling rationale for excluding the license requirement for PBMs involved in Medicaid. Every

other Medicaid provider and billing entity is licensed, registered or regulated by the State of New York. PBMs should not be an exception.

High Cost Drug Surcharge

Manufacturers control drug prices.

As drugs are bought by wholesalers and then purchased by pharmacies, the price that is paid is based on the price set by the manufacturer, to which marginal discounts are applied. Therefore, any rebate or surcharge should be paid by the manufacturer.

Pharmacists support efforts to rein in exorbitant drug prices, but we are concerned about imposing the surcharge on any entity responsible for the "first sale in the state." If the "first sale in the state" is from a wholesaler to a pharmacy, the surcharge would apply to the wholesaler. The wholesaler does not set the price and most likely would be forced to pass the extra cost down to pharmacies.

We respectfully ask the legislature to rework this budget proposal so that it holds pharmacies and wholesalers harmless. Operating margins are already razor thin.

Comprehensive Medication Management

The Value-Based Payment Workgroup, with input from the full spectrum of healthcare providers, has recommended Comprehensive Medication Management (CMM) by a pharmacist as a strategy to improve quality of care and control the cost of care for patients with common chronic diseases.

Upon referral from a primary care physician or nurse practitioner, a pharmacist would meet with the identified patient to review and discuss prescribed medications to determine how the patient can better achieve the goals of therapy established by the primary care provider.

Providing this service to patients selected by their primary care providers will control costs associated with poorly controlled asthma, diabetes, hypertension, high cholesterol or other chronic conditions that are managed by prescription drugs commonly dispensed in community pharmacies. A key component of CMM is access to the patient's medical record that is shared with the primary care provider.

The Society urges the legislature to include the CMM proposal in the final state budget.

Thank you for the opportunity to testify before you today. We are eager to answer to any questions you may have.

