COMMUNITY Health Options

Testimony Neither for Nor Against

LD 1018 An Act to Protect Health Care for Rural and Underserved Areas by Prohibiting Discrimination by Participants in a Federal Drug Discount Program

Kimberly Cook, Esq.

April 16, 2025

Senator Bailey and Representative Mathieson and distinguished members of the Health Coverage, Insurance and Financial Services Committee, my name is Kim Cook and I am an attorney with Government Strategies, testifying neither for nor against to LD 1018 on behalf of Community Health Options. Community Health Options is Maine's nonprofit CO-OP health insurance company and exists for the benefit of its Members and its mission which is to provide affordable, high-quality benefits that promote health and wellbeing.

We appreciate this Committee's continued attention to the role of prescription drugs in driving healthcare costs. In 2023, this Committee amended and unanimously approved LD 1395, An Act to Increase Transparency Regarding Certain Drug Pricing Programs. It requires each hospital participating in the 340B drug pricing program to provide an annual report to the Maine Health Data Organization (MHDO) that includes:

(1) a description of how the hospital uses savings from participation in the 340B program to benefit its community;
(2) the annual estimated savings from the 340B program to the hospital, and
(3) a comparison of the hospital's estimated savings under the 340B program to the hospital's total drug expenditures.

MHDO finalized its rule implementing this law in fall of 2024 giving hospitals until June 30, 2025 to report the required information which will be compiled into a report developed by MHDO and made public. Our understanding is that this first report will be provided to the Committee later this year.

Given this timing, we encourage the Committee to carryover LD 1018 so that you will have the opportunity to review a germane report regarding the impacts of the 340B program on Maine hospitals and our health care system. However, should the Committee choose to proceed without the advantage of the report to be produced by MHDO, we'd encourage the

COMMUNITY Health Options®

Committee to narrow the scope of this bill to cover only federally qualified health centers and revisit the topic of hospitals once the legislatively mandated data is available.

Turning to the substantive provisions of LD 1018, we have some concerns and suggestions that we respectfully request the Committee to consider.

Prohibition on Terms and Conditions

LD 1018 would prohibit the imposition of terms or conditions on a 340B entity that differ from terms or conditions applied to entities that are not 340B entities warrants your careful consideration. **First, we urge the Committee to strike §7704(2)(E) as carriers rely on pharmacies to alert them when a 340B claim is submitted.**

> E. Requirements that a claim for a drug include any identification, billing modifier, attestation or other indication that a drug is a 340B drug in order to be processed or submitted or reimbursed unless it is required by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services or the Department of Health and Human Services for the administration of the MaineCare program;

Contracts between carriers and pharmacy benefit managers typically specify that 340B claims are generally not eligible for rebates. **Without notification from the pharmacy that a 340B claim is filed, carriers are likely to submit an invoice for the rebate to the drug manufacturer only to have the rebate "clawed back" several months later. This laborious process can be avoided if pharmacies simply note that the prescription being filled is for a 340B drug.** The National Council for Prescription Drug Programs has provided detailed instructions on this topic in its publication *340B Information Exchange Reference Guide* that we encourage the Committee to review and incorporate into its deliberations.[1]

The bill would also prohibit reimbursement of a 340B entity for 340B drugs at a lower rate than that paid for the same drug to non-340B entities. As written, we believe that this prohibition could prevent future care management and medication therapy management collaborations between carriers and health systems that operate their own on-site 340B pharmacy. Such collaboration could promote shared savings through the health system's

[1] Available at https://www.ncpdp.org/Resources/340B-Reference-Guide

COMMUNITY Health Options®

pharmacy thereby reducing reimbursement below the national average drug acquisition cost (NADAC). **To avoid foreclosing upon this possibility, we recommend revising §7704(1) to include language indicating that reimbursement at a lower rate is prohibited unless mutually agreed upon by both parties.**

Prohibition on Incentives

While we do not incentivize Members enrolled in our fully insured (state regulated) plans to use non-340B pharmacies, we do provide a monetary incentive for Members to use lower cost, high quality infusion centers or home infusion. Since 2019, this voluntary incentive program has resulted in a decrease of $7.9 million in medical claims costs. Although some of these lower cost, high quality infusion centers are 340B covered sites, others are not. **We are concerned that §7704(5) and §7704(6) of the bill could jeopardize this successful and entirely voluntary program and we encourage the removal or amendment of this language to ensure that state-regulated health plans can continue to incentivize high quality, cost-efficient health care services.**

Nonapplicability to MaineCare

Finally, if the Committee chooses to move forward with this bill, we urge the Committee to apply its provisions to all health plans that the legislature has authority over, including MaineCare. The Committee has exercised this authority in its prior actions, most recently in LD 107 (biomarker mandate). MaineCare covers approximately 400,000 Maine people, or 29% of the state population. As we have previously indicated, when the Committee believes a policy should be applied to the state-regulated insurance market, we encourage the extension of the policy to MaineCare as well. The reforms proposed in this bill are no less applicable to the MaineCare program and expanding this bill to include MaineCare will serve to increase the support for safety-net providers throughout Miane as well as consistency across health plans in the state.

We appreciate the opportunity to comment and thank the Committee for its consideration.