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Introducing LD 1938, “An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program”

Joint Standing Committee on Health Coverage, Insurance, and Financial Services
February 15, 2022

Good morning, Sen. Sanborn, Rep. Tepler and esteemed members of the Committee on Health Coverage, Insurance and Financial Services. My name is Ned Claxton, and I’m honored to represent Senate District 20, including Auburn, Mechanic Falls, Minot, Poland, and New Gloucester. I appreciate the opportunity to introduce this bill.

The intent of LD 1938, “**An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program**”, is to protect patient choice and to preserve the benefits of the 340B program. It provides greater flexibility in how patients get their medications, and it keeps PBMs and insurers from considering a drug’s 340B status in establishing their formularies. The language for the bill was taken from statute in Arkansas, where they are likely to have different PBM requirements.

Section 340B of the U.S. Public Health Service Act :

.....drug manufacturers that choose to participate in Medicare and Medicaid are required to sell certain outpatient drugs to eligible safety-net providers at a discount. These providers then use the savings to “stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.”

Eligible providers:

- Hospitals – Low-income areas where the share of uncompensated care is high (DISH), Critical Access, Children’s, Cancer
- Clinics – FQHCs, Family Planning, STI, Tribal
- Pharmacies

For these eligible providers, discounts are 13 – 23% or higher, depending on the drug. Providers use them to stretch resources, increase access to care, lower the cost of medicines, cover uncompensated care and, in some cases, survive. This particularly applies to Critical Access hospitals. In Maine, most of our hospitals are DISH hospitals.

13 drug manufacturers have imposed unilateral restrictions on 340B discounts when drugs are dispensed at community pharmacies or when they have announced their plans to do so. These

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actions are in violation of the 340B statute, which states that manufacturers must provide 340B pricing on any eligible drug to any eligible covered entity regardless of how the hospital intends to dispense the drug. Federal litigation will be required to sort this out.

In Maine, some insurers and PBMs, working with drug manufacturers, have restricted patients to mail-order only. That can keep people from using their preferred drug store or going to a handier pharmacy. If I'm already food shopping at Hannaford, Shaw's, or Walmart, why can't I just get my prescription there? This restriction also means that patients lose the opportunity to ask questions of their pharmacist. It also doesn't recognize that mail service has become less reliable (or mailboxes less accessible in the winter). The bill would allow patients to not use mail-order if there was a better solution for them. Patients should be given the option to use a local pharmacy.

The formularies, the list of approved drugs, that are used by insurers have increasingly considered the 340B status of drugs that could be included and, in some cases, have left them off the approved list because the profit margin is reduced. The bill would eliminate consideration of a drug's 340B status in creating formularies.

The list of approved pharmacies that insurers allow has also been influenced by whether a pharmacy participates in the 340B program or not. As it is, pharmacists have to file claims acknowledging the 340B source. This discriminates against those pharmacies that work with the 340B program and can take the form of higher co-pays to use a local pharmacy or exclusion from a network.

Mainers like to have choices and this bill protects patient access to local pharmacies at the same time it protects local pharmacies and other 340B entities from being discriminated against because they participate in the 340B program.

Thank you for the opportunity to offer this bill for the committee's consideration. I will be happy to try and answer questions.

Proposed changes:

Strike 2.B & C, page 1, lines 25 - 28

Change 2.E.4, page 2, line 7 to read - Refusal to "contract with a 340B entity based solely on 340B entity status".

Change 3.B.6, page 2, line 25. Substitute 'Increase' for 'Modify'

Strike 3.B, page 2, line 35