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March 8, 2022

Honorable Heather Sanborn, Senate Chair
Honorable Denise Tepler, House Chair
Joint Standing Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, Maine 04333-0100

Re: L.D. 1938, “An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program”

Dear Senator Sanborn, Representative Tepler, and Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services:

On behalf of Anthem Blue Cross and Blue Shield, I would like to thank you for the opportunity to submit our comments with respect to *L.D. 1938, “An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program.”*

1. Mail Order Provisions

As drafted, the bill and the proposed amendment seek to impede the use of mail order pharmacies, which provide both cost savings and convenience for members.

Members are not required to use mail order pharmacies, but it may provide the maximum benefits under the plan. Thus, members in Maine can obtain the same benefits at retail as they would through mail order if the retail pharmacy is willing to agree to those terms.

In addition, it is not clear what is meant by allowing the member to use any pharmacy without penalty. Are different cost shares for in and out of network or different tiers of pharmacy providers a penalty? Similarly, it is not clear what constitutes “coercing” a member to use mail order? Do different cost shares constitute coercion?

It is important to remember that Maine has an “any willing pharmacy” law, which requires carriers to offer retail pharmacies the opportunity to participate in the pharmacy network on the same terms and conditions as a mail order pharmacy. This requirement largely addresses the objectives of the provisions of the bill dealing with the use mail order pharmacies—members can obtain those same benefits from any retail pharmacy willing to participate on the same terms.

2. 340B Pricing

The bill and the amendment seek to prohibit carriers from accessing the 340B discounts on behalf of their members. It is important to remember that allowing a health plan to access 340B pricing for its members does not deprive the hospital of the 340B savings because the hospital does not pass through the price it paid—it marks up the drug.

Hospitals markup drugs and other supplies over the acquisition cost, just as a retailer marks up products over its wholesale acquisition cost. The question is to what amount should that markup apply—the amount actually paid by the hospital for that drug under the 340B program or the amount the hospital would have paid absent the 340B discount? If a hospital obtains a drug with a 340B discount but charges the health plan member as if there was no discount, the costs to the health plan and the member are increased.

Example #1 of Hospital Drug Markup			
	Amount paid based when billed as if 340B discount was not received	340B Price (30% Discount)	Difference
Cost of Drug	\$500.00	\$350.00	\$150.00
Mark up Percentage	300%	300%	
Amount billed by hospital	\$1,500.00	\$1,050.00	\$450.00
20% Coinsurance paid by member	\$300.00	\$210.00	\$90.00

Example #2 of Hospital Drug Markup			
	Amount paid based when billed as if 340B discount was not received	340B Price (30% Discount)	Difference
Cost of Drug	\$1,000.00	\$700.00	\$300.00
Mark up Percentage	500%	500%	
Amount billed by hospital	\$3,000.00	\$3,500.00	\$1,500.00
20% Coinsurance paid by member	\$1,000.00	\$700.00	\$300.00

The foregoing examples would apply when the member has met their deductible and is paying cost-share in the form of co-insurance. If the member has not met their deductible, they will bear the entire cost of that difference.

As noted in the testimony submitted on behalf of Cigna, it is important for plans and PBMs to have the ability to identify 340B, claims, regardless of the reimbursement for those claims/ Rather than prohibit health plans and their members from accessing 340B discounts, we believe that this should be negotiated between the plan and the provider in the context of the overall reimbursement structure.

Thank you for the opportunity to share these concerns. We strongly urge you to vote “ought not to pass” on L.D. 1938 and I would be happy to answer any questions you may have at your work session.

Sincerely,

A handwritten signature in blue ink, reading "Kristine M. Ossenfort". The signature is written in a cursive style with a large, sweeping initial 'K'.

Kristine M. Ossenfort, Esq.
Senior Director, Government Relations