Testimony Relating to LD 1395, An Act to Increase Tranparency Regarding Certain Drug Pricing Programs

From: Maureen Hensley-Quinn, Senior Program Director, Coverage, Cost and Value at the National Academy for State Health Policy (NASHP)
To: Maine Health Coverage, Insurance, and Financial Services Committee
Date: April 25, 2023
RE: LD 1395

Senator Bailey, Representative Perry and members of the Health Coverage, Insurance and Financial Affairs Committee,

My name is Maureen Hensley-Quinn and I am a Senior Program Director at the National Academy for State Health Policy. NASHP is a non-partisan forum of policymakers that works to develop and promote innovative health policy solutions. Our work is guided by state health officials across multiple agencies and offices – including executive and legislative branches of government – to solve problems, conduct policy analysis and research, and provide technical assistance. Over five years ago NASHP's state Academy Members requested we work with states to identify cost drivers in the health system. States asked NASHP to develop and share strategies that focus on reducing price and cost in order to provide effective cost-containment policy options to states. Our work on health care costs includes NASHP's Centers for Drug Pricing and Health Systems Cost to support states as they attempt to address the spiraling costs of prescription drugs and high and rising provider prices.

Through our Centers for Drug Pricing and Health Systems Cost, state officials raised questions about the 340B drug discount program and have sought to better understand drug pricing and health system financials. NASHP is neutral on specific state legislation, so shares this testimony as neither "for" or "against" LD 1395. However, NASHP generally supports increased transparency and making information available to state agencies to be better equipped to make evidence-informed policies.

The 340B Program & State Efforts to Understand Its Impact on Health Care Costs

Congress established the 340B Program as part of the Veterans Health Care Act of 1992 (Public Law 102-585). Section 340B was created "to enable [covered] entities to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services". Federal administration of the program resides within the Office of Pharmacy Affairs of the Health Resources Services Administration (HRSA). As a prerequisite to participating in the Medicaid Drug Rebate Program, drug manufacturers agree to provide pharmacy products to covered entities at significantly reduced prices. (The minimum discount is 23.1% but inflationary rebates often result in rebates that are much higher.)

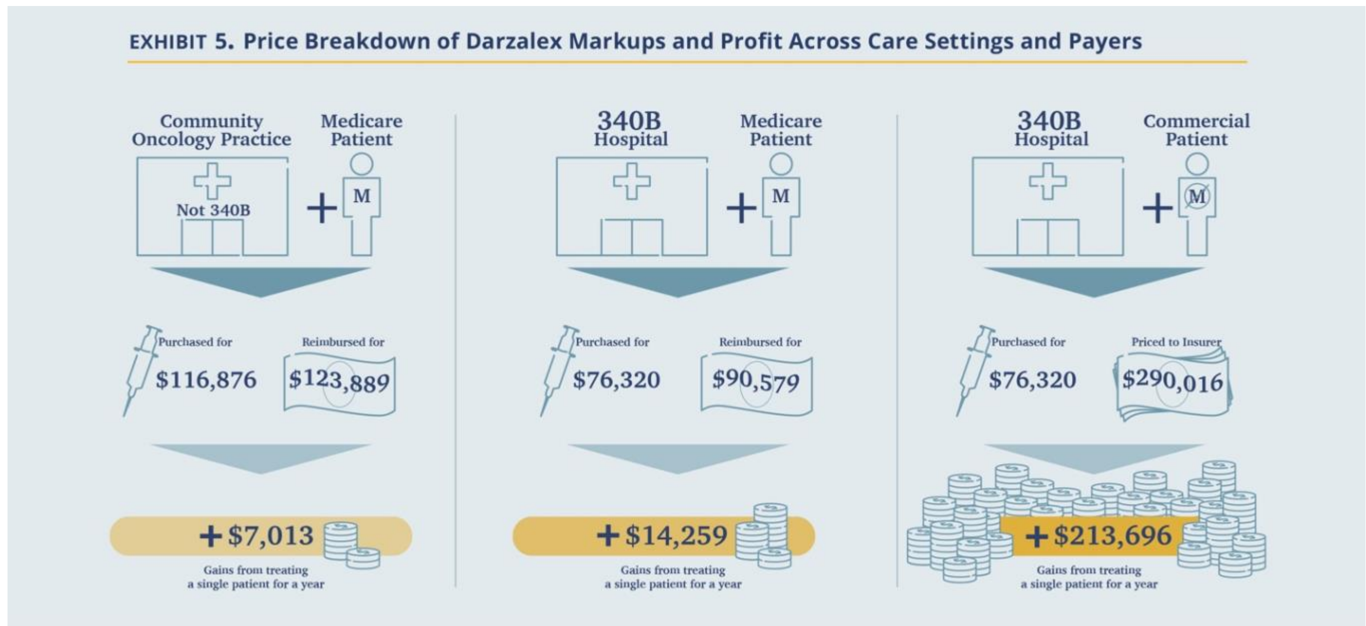
The ability to purchase drugs at significant discounts is incredibly important to the safety net providers striving to fulfill their mission of providing quality care to people with low incomes, including the uninsured. For many years the federal government limited participation in the 340B program to a relatively small number of not for profit clinics and hospitals serving these populations. However, in recent years Congress has greatly expanded the number of providers who can participate (known as "covered entities") and as a result the total value of drugs purchased under the program has skyrocketed.

The explosive growth in the 340B program can be attributed primarily to increased participation by hospitals, some of which are part of large health systems that include provider offices, etc., as opposed to stand alone clinics. In 2021, hospitals accounted for 86.9% of total 340B prescription drug purchases, or approximately $38.1 billion.

States across the country, including Maine, are devoting tremendous resources and building analytical capacity to better understand drivers of health care cost and the financial health of important health providers, like hospitals, to ensure quality health services are available to their citizens. State officials have taken note of the rapid growth of drug purchases under the 340B program and are aware that it represents a much larger percentage of pharmacy spending than it had in the past. Health systems can and do routinely dispense drugs brought using the 340B discount to patients with commercial insurance, creating a profitable "spread" between hospital's acquisition cost and what it is ultimately paid by a health plan. Spread pricing has become a critical revenue source for covered entities – so much so that there is concern that access to 340B discounts is a driver of health system consolidation. The 340B drug rebate program is critical to bringing the state lower cost drugs, provides a substantial revenue source for an increasing number of hospitals and health systems, but the state has virtually no information or data about this program.

There is no specific requirement in federal law that participating hospitals use drugs purchased under 340B solely to benefit low-income people or the programs that support their health care. And states are eager to understand the extent, if any, that the increased financial value realized by hospitals translate into greater benefit for low-income residents or the greater community.

The chart below demonstrates how much additional revenue a 340B covered entity can generate when dispensing a drug to a patient covered by commercial insurance compared to a non-340B provider dispensing the same drug to a patient covered by Medicare:



Increasing Transparency of the 340B Drug Discount Program

LD 1395 represents an effort by Maine to better understand the impact that the 340B program has on health care spending in the state. It requires each hospital participating in the program to report information on the purchase price of drugs bought under the 340B program and additional information describing the amount that the hospital was reimbursed by payers for those drugs. It also requires reporting on each hospital's payer mix, annual revenue, and contracting relatioships with 3rd party vendors.

Gaining information about the 340B program will be important as Maine strives to understand the drivers of health care spending, the financial resources within the market and the impact that rising costs have on the system's ability to deliver quality care to all of the state's residents. There is value in understanding how savings realized through the 340B program fit in to the overall picture of health care spending and sustainability in the state.

Conclusion

In introducing this legislation, Maine follows other states interested in better understanding the 340B drug pricing program and its impact on health care costs. During the current state legislative session, Connecticut introduced legislation similarly focused on 340B program oversight and transparency.

Washington state's recently enacted budget prompts the state to establish an annual reporting requirement for all covered entities participating in the 340B program that receive Medicaid funds.

As the Committee continues its work on this important bill NASHP is available to support your work, answer any questions and provide additional information as necessary. I would be happy to provide follow-up information to answer any questions you may have and can be reached at mhq@nashp.org. Thank you for the opportunity to share this information.

Respectfully,

Maureen Hensley-Quinn
Senior Program Director | Coverage, Cost, and Value Team
National Academy for State Health Policy
April 25, 2023