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Prescription Drug Transparency

Description

Prescription drug pricing transparency efforts require drug manufacturers to report the reasons behind high prices and price increases. The principle behind the bills is that increased disclosure around pricing practices will result in more meaningful and actionable information for states and accountability for manufacturers. Drug pricing transparency legislation will also help payers determine whether a drug price or price increase is justified. Moreover, the added scrutiny brought on by transparency legislation could encourage drug manufacturers to reconsider their standard practice of setting high launch prices and then increasing them year after year.

AARP strongly supports increased transparency in the drug development and pricing process and generally throughout the prescription drug supply chain. However, because too much transparency within the drug supply chain can actually reduce competition and lead to higher drug prices, transparency legislation should strike a careful balance between the desire for more information and the possibility that such disclosures could harm competition and lead to higher drug prices.

How does this work?

Transparency bills require pharmaceutical companies to provide specific information about their pricing practices. Transparency legislation generally requires pharmaceutical companies to provide information about how a drug is priced, and to justify large price increases (or launch prices) that exceed a predetermined threshold.

A transparency model bill drafted by NASHP (National Academy of State Health Policy) includes the following manufacturer reporting requirement triggers:

- For brand-name drugs: A 20 percent increase per WAC (wholesale acquisition cost) unit during any 12-month period;
- For generics: A WAC unit price of $100 or more, and a 20 percent increase per WAC unit during any 12-month period;
- For new drugs: A WAC of $670 or more; and

- Used for Pharmacy Benefit Managers (PBMs) and wholesalers: The state will require PBMs and wholesalers to report on specific drugs identified as being of interest following state review of manufacturer and insurer reports.

Some states have also included penalties in their bill language for manufacturers that fail to report. The NASHP model language includes a penalty of $30,000/day. The model language also invokes subpoena authority if reporting entities do not provide the required data or if the data they provide is unclear or inadequate.

What does a transparency law mean for consumers?

Transparency bills, while by themselves do not reduce prescription drug prices, should be considered important building blocks for other legislative efforts, such as cost review commissions and drug affordability boards that can more directly address costs. In addition, transparency laws may provide consumers with advance warning of increases in their drug costs, allowing consumers to discuss lower cost alternatives with their health providers. Moreover, in order to avoid reporting requirements set forth by transparency laws, manufacturers may limit their price increases to keep them below the reporting threshold.

Where has this state legislative policy been enacted?

In 2016, Vermont passed the nation's first transparency law, which has led to many state legislatures considering bills requiring more disclosure and transparency from drug manufacturers. In total, according to NASHP data, 12 states (CA, CT, CO, ME, MN, NH, NV, MD, OR, TX, VT, WA) have enacted drug transparency laws. In 2019, approximately 27 states filed 53 bills on transparency with 6 states (CO, ME, NV, OR, TX, WA) successfully passing the following laws in 2019.

- Colorado – HB 1131 requires a drug manufacturer or its agent to provide a prescriber the wholesale acquisition cost of a drug when marketing or providing information on a drug to a prescriber.
- Maine – LD 1162 requires manufacturers to report annually to the Maine Health Data Organization (MHDO) about drug prices when the manufacturer has, during the prior calendar year, increased the wholesale acquisition cost (WAC) of a brand-name drug or a generic drug by a certain per pricing unit percentage.
- Nevada – SB 262 expands existing law, which requires transparency around drugs used to treat diabetes, and requires new transparency for drugs used in the treatment of asthma. The law also authorizes the state to collect monetary penalties for noncompliance.
- Oregon – HB 2658 amends transparency legislation passed in 2018 and requires manufacturers of prescription drugs to report to the state any specified increase in price of certain prescription drugs at least 60 days before the date of such increase.

- Texas – HB 2536 requires drug manufacturers to disclose pricing information to the state on drugs with a wholesale acquisition cost of $100 or more for a 30-day supply, or that increase 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year. Pharmacy Benefit Managers and insurers are also required to make annual reports to the state. All information disclosed will be posted publicly.
- Washington - HB 1224 requires drug manufacturers to disclose the 25 most-prescribed drugs, the 25 costliest drugs by total plan spending, the 25 drugs with the highest year-over-year increase in spending, and a summary analysis of the impact on drug costs on health premiums. Manufacturers must submit annually a description of the factors used to make the decision to increase the wholesale acquisition cost (WAC) of the drug and the amount of the increase, along with a justification for the increase. This law also requires a pharmacy benefit manager (PBM) to submit an annual transparency report.

A number of states that have passed transparency laws are using this legislation as a springboard to establish prescription drug rate review or rate setting commissions. State rate review commissions analyze drug pricing data from manufacturers, recommend policy options to the state for decreasing prices and, in some cases, establish drug price ceilings.