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TESTIMONY IN OPPOSITION TO S.B. 1052
AN ACT CONCERNING MAXIMUM ALLOWABLE COST LISTS
AND DISCLOSURES BY PHARMACY BENEFIT MANAGERS

March 17, 2015

CVS Health is pleased to provide comments on S.B.1052 an act concerning maximum allowable cost (MAC) lists and disclosures by pharmacy benefit managers. CVS Health is the leading pharmacy health care provider in the United States. Through our integrated offerings across the entire spectrum of pharmacy care, we are uniquely positioned to provide greater access to care, engage plan members in behaviors that improve their health, and lower overall health care costs for health plans and their members. CVS Health provides multiple points of care to patients through our retail, mail and specialty pharmacies and MinuteClinics. As one of the country's top Pharmacy Benefit Managers (PBM), CVS/caremark also provide access to a network of more than 65,000 pharmacies, including more than 7,700 CVS/pharmacy stores across the United States. We provide PBM services to over 2,200 clients who provide health coverage through large employers, unions, health plans and state and federal plans. We touch more than 65 million American lives and are one of the largest providers of Medicare Part D coverage.

CVS Health operates 150 CVS/pharmacy stores in Connecticut which filled over 17million prescriptions in 2013 for Connecticut patients. Our CVS/caremark pharmacy benefits manager also processed over 9 million Connecticut prescriptions in 2013. We are a trusted and reliable source of health care for tens of thousands of Connecticut citizens. We do not take this trust lightly, and take great pride in our employees and the services they offer to the citizens of Connecticut, including the state employees.

CVS Health opposes S.B.1052 because the bill inappropriately intrudes on contract pricing in the private marketplace through its proposed requirements on MAC pricing.

Introduction to MAC

MAC (Maximum Allowable Cost) is a common cost management tool specifying the reimbursement limit for a particular strength and dosage of a generic drug that is available from multiple manufacturers, but sold at different prices. It is calculated based on aggregate data that shows what pharmacies on average pay for generic drugs in the marketplace. MACs are used to ensure pharmacies are not overpaid or underpaid, that payers and their members get the best deal, and to encourage pharmacies to be efficient and prudent purchasers of generic drugs by seeking the best available pricing in the marketplace. All pharmacies in our networks may dispute the accuracy of any MAC claim and be compensated accordingly if they can demonstrate they are being underpaid for a particular claim. In 2014, less than 0.00001% of the claims processed by CVS/caremark resulted in a disputed claim. CVS/caremark reviews each disputed claim and if a pharmacy is correct, we make a price adjustment for the specific generic product in question. These extremely rare occasions simply reflect the fact that while CVS/caremark knows the price that generics are available for in the marketplace at any given time, we have no visibility into what a specific pharmacy pays for their prescription drugs, what wholesaler they may be using or when they may have purchased prescriptions—nor should we

Additionally, when CVS/caremark "overpays" for a MAC'd generic, we don't come back and seek recoupment from the pharmacy for having paid them significantly more than their costs. That is simply the nature of generic pharmaceuticals. Because they are no longer patent-protected they are simply a commodity, and like any other commodity, consumer demand, volume purchased, shortages and other factors determine price on the open market. That this happens doesn't mean a pharmacy has done anything wrong, likewise nor has CVS/caremark. In some cases a pharmacy may be purchasing through a wholesaler who is not selling that generic to them at the price another wholesaler would, or they may have purchased the drugs just before a negative price swing and their inventory is then more expensive than the rate that drug is now selling for on the open market. Because generic drugs are a true commodity, inventory management and days of supply on hand are very important business tools for a modern pharmacy to manage. This generic commodity market is not only efficient, but it is one of the key reasons that off-patent prescription drugs (generics) with multiple manufacturers making the same drug and competing for business are so affordable in comparison to brand drugs still on patent and operating under an effective monopoly. Helping to move beneficiaries to less expensive generic drugs when appropriate is a key role that pharmacies and PBMs alike play in today's healthcare landscape. In fact, while brand drugs have increased in price over the last two years by an average of about 11%, generic drugs have, in fact, become even less expensive over the same timeframe.

MAC is a common and well established pricing methodology for generic prescription drugs. MAC has been in existence for over 20 years and is one of the primary reasons why generic pharmaceuticals in the United States are the envy of the western world from a pricing and competition standpoint. Moreover, MAC is not just a tool used by PBMs, it is important to note that there are currently 46 state Medicaid programs that now use MAC lists to set their reimbursement levels for generic drugs. States adopted MAC lists after Government audits showed that Medicaid reimbursements for generic drugs far exceeded pharmacy's acquisition costs. The fact is that MAC lists are used in both the public and private sectors to help control costs and there is no more efficient and equitable tool available.

Contrary to a rather common misnomer, there is no set MAC list or generic drug price. The lists and prices of generic drugs change at a given time based on commodity market forces. The sheer volume of generics and frequency of changes in price make it impossible for a pharmacist to review all of the changes in lists and prices. According to the Generic Pharmaceutical Association, "10,072 of the 12,751 drugs listed in the FDA's Orange Book have generic counterparts." In other words, this bill would require us to notify every retail pharmacy in any of our multiple networks in Connecticut of changes in pricing for the thousands of generic drugs available on our MAC lists (most of which are available in various different quantities and strengths). There are multiple lists because along with our clients and employers, CVS/caremark and other PBMS create them to meet specific client needs and to help manage prescription drug expenditures based on the demand and needs of each unique client. PBMs like CVS/caremark help keep our clients healthcare costs under control by effectively using MAC pricing as one of several cost control measures. Employers and their employees ultimately lose when a bill like this becomes law.

Why We Oppose the MAC Provisions

Senate Bill 1052 would mandate by statute a one-size-fits-all approach to the key contract term of MAC pricing without any consideration as to its necessity or consequence. State-mandated terms of private PBM agreements could impede employer and health plans' ability to seek favorable terms during contract negotiations. A PBM may offer its client multiple variations of plan options based on a client's Request for Proposals ("RFP") or bid requirements, culminating into a contract only after aggressive negotiations and competition among multiple PBMs where members' access to prescription drugs, economic efficiency and quality are key considerations on both sides. Clients choose pricing arrangements that consider impact on their overall costs and cash flow as well as the level of risk they wish to assume. This flexibility affords plans the

ability to choose from the most efficient PBM options that meet the needs of their members, which ultimately fosters competition among PBMs and allows both sides to preserve incentives that reduce overall health care costs. By dictating the key terms of a contract between health plans and PBMs and by interfering in these contracts, S.B.1052 would handcuff PBMs, employers and health plans from engaging in aggressive negotiations that would otherwise reduce costs while increasing health care quality.

The clients of Pharmacy Benefit Managers are sophisticated purchasers of health care that rely on PBMs to help them manage their drug benefit. Pharmacy benefit managers consider many factors when establishing MAC lists, including: First Databank/Medispan data, the federal upper limits of CMS, wholesaler information, pharmacy incentive to dispense the generic over the brand, pharmacy feedback, non-MAC discounts and client performance guarantees, to name a few. Contract pricing, including MAC lists, are proprietary information and absolutely should not be publicly disclosed or available to other PBMs. Disclosure of proprietary pricing information would have a chilling effect on the generic drug marketplace and would actually drive prices higher by eliminating the ability to compete in this area. In fact, MAC disclosure would only serve to drive up costs in the entire marketplace, the opposite of what we as a nation are trying to accomplish with our infinite medical needs, yet quite finite financial resources. There is no provision in this bill for maintaining the confidentiality of this information and if MAC formulas or reimbursements become subject to disclosure of any kind, even if barriers were put in place, the information will inevitably find its way into competitors hands and the generic prescription drug marketplace in the United States would cease to realize the kinds of savings and efficiencies we enjoy today.

We also have some specific objections. For example, the bill would prohibit a PBM from creating a MAC for a particular generic drug if there are fewer than three drug substitutes available. At the beginning and the end of the life cycle of a particular generic molecule, there will typically not be three or more generic versions available, and there can still be significant differences in the prices at which the drugs are sold. By prohibiting PBMs from creating a MAC for those drugs, a higher reimbursement rate similar to brand reimbursement will likely be the result, which means that payers and patients lose the cost savings that generic drugs should provide. S.B. 1052 also limits the types of generic drugs that can be included on a MAC list to only "A" and "AB" rated medications. By excluding "B," "NA," and "NR" rated generic drugs, this significantly decreases the number of drugs that can be dispensed at discounted generic drug rates.

Also, the bill states that if a PBM changes the MAC reimbursement rate following an appeal, the change must be made retroactive to the date the pharmacy initiated the appeal proceedings and apply to all pharmacies in the PBM's network. Retroactive adjustment is problematic, even for one claim by one pharmacy. The transaction could have occurred months ago - the patient has paid the co-pay or co-insurance, the pharmacy's claim has been adjudicated, and the PBM has in all likelihood billed the client and been paid for that claim, all of which would be disrupted. If a patient is obligated to pay 20% co-insurance, for example, and the MAC rate is raised from \$20 to \$25, then the patient's share of the cost would rise from \$4 to \$5 for that claim. How does the pharmacy collect that additional amount from the member? Application of the adjusted rate to all pharmacies in the network is also problematic, for two reasons. First, if applied retroactively across the network for all transactions for that particular drug, the disruption among patients, pharmacies, PBMs and clients is multiplied. Second, it would represent a windfall to some pharmacies, as not all pharmacies in the network receive the same reimbursement rate. With their greater purchasing power and economies of scale, for example, chains may receive a lower reimbursement rate than independents. Under those circumstances, giving those chains an adjustment based on the result of an appeal by one independent pharmacy makes no sense.

CVS Caremark appreciates the opportunity to provide comments in opposition to S.B.1052 and respectfully asks that you reject S.B.1052. Should you have any further questions, please feel

free to contact me.

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4