

Public Health Committee JOINT FAVORABLE REPORT

Bill No.: HB-6669

AN ACT PROTECTING PATIENTS AND PROHIBITING UNNECESSARY

Title: HEALTH CARE COSTS.

Vote Date: 3/20/2023

Vote Action: Joint Favorable

PH Date: 3/13/2023

File No.:

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SPONSORS OF BILL:

The Governor's Bill.

REASONS FOR BILL:

Healthcare costs, prescription drug costs, and other fees associated with healthcare continue to rise. The unaffordability of healthcare is a public health crisis and prevents people from accessing both routine and lifesaving healthcare needs. This leads to additional costs to manage chronic diseases, many with fatal outcomes, and creates additional financial burdens for patients and their families. The goal of this bill is to lower the cost of healthcare while protecting patients from unnecessary costs.

RESPONSE FROM ADMINISTRATION/AGENCY:

Manisha Juthani, MD, Commissioner, Department of Public Health (DPH):

DPH strongly supports House Bill 6669, which aims to lower the cost of healthcare and protect patients from unnecessary costs. The rising and unaffordable cost of healthcare is a public health crisis that presents significant barriers to health equity and access. The pandemic has led to increased instances of chronic disease and mismanaged chronic conditions, resulting in increased costs to individuals and families. Families are being forced to ration treatments and drugs or forego necessary care altogether, jeopardizing their health.

DPH does not foresee any regulatory or operational challenges associated with implementing section 11 of the bill, which eliminates facility fees for services provided outside of a hospital's campus or at a freestanding emergency department. The uncontrolled and rising cost of healthcare in Connecticut must be addressed to avoid further sacrificing the public health of the residents of our state.

Deidre S. Gifford, MD, Executive Director, Office of Health Strategy (OHS):

OHS supports this bill which aims to protect patients and prohibit unnecessary healthcare costs in the state. Dr. Gifford highlighted the profound impact of healthcare affordability on the residents of Connecticut, stating that almost 40% of Americans delayed care due to cost in 2021, and consolidation in the healthcare industry is a significant contributor to the rise in healthcare costs to patients.

Dr. Gifford also emphasized the need to address the underlying cost drivers of healthcare and trusts data-driven solutions, assigning special consideration to the COVID-19 pandemic that has brought significant disparities in healthcare access and affordability to the forefront.

This bill proposes a package of initiatives that aim to address healthcare affordability with a multi-pronged approach, specifically targeting hospital and prescription drug costs, and enhancing the state's regulatory authority under the Certificate of Need (CON) program to ensure adequate enforcement. One of the key cost drivers resulting from consolidation is facility fees, and this bill aims to limit fees for services for which they were initially designed, such as maintaining around-the-clock care for inpatient and emergency care.

The bill also prohibits facility fees on routine services such as diagnostic testing and other certain classes of outpatient services and allows the Office of Health Strategy to identify additional facility fee prohibitions on other outpatient diagnostic and imaging services that may be safely and effectively provided in a setting other than a hospital. Again, this effort is to address facility fees for the services for which they were originally designed, aiming not to eliminate them altogether.

Ted Doolittle, Healthcare Advocate, Office of the Healthcare Advocate (OHA):

OHA is supportive of several important elements of this bill. The focus of their testimony is on two provisions of the bill: facility fees and the 340B discount drug purchasing program. Connecticut residents pay more for healthcare than other wealthy nations due to the high prices for hospital fees and prescription drugs. The bill would prohibit larger health systems from imposing exorbitant hospital facility fees on consumers for certain overhead costs unrelated to the services provided.

The 340B program is a vital source of economic relief for low-income communities. OHA supports the language protecting the 340B program as it aims to prevent discrimination against 340B covered entities and their patients by pharmaceutical benefits managers and other market participants. Contracts which discriminate in any way and do not yield the maximum benefit of the 340B program to our low-income communities should not be permitted or enforced in Connecticut. OHA believes this bill establishes reasonable restraints on health systems to prevent market failures resulting in further expense for Connecticut residents seeking care.

Andrea Reeves, Commissioner, Department of Social Services (DSS):

DSS strongly supports HB 6669 even though it does not directly impact members when they are enrolled in the Medicaid program. However, there are people who experience a lapse of healthcare coverage when switching between Medicaid and other forms of health insurance. It is important to have access to affordable prescription drugs, lower overall healthcare costs,

and focus on efforts to promote the health of all residents in the state. When healthier people enroll in Medicaid it helps to reduce the total costs of the Medicaid program.

Michelle Seagull, Commissioner, Department of Consumer Protection (DCP):

DCP supports this bill and Sections 2-8 of the bill were drafted by the DCP. Sections 2-3 expands the Prescription Drug Monitoring Program to include all drugs and devices dispensed by pharmacies and requiring the collection of information associated with "deprescribing" medicine is an additional tool for practitioners to create positive outcomes. It will also bring cost savings to prescribers as they will have access to more of a patients' prescription history. They can remove unnecessary and possibly harmful medications from a treatment plan.

Sections 4-8 creates a licensing process and professional requirements for pharmaceutical representatives, including continuing education in ethical standards, health equity, and laws and regulations applicable to pharmaceutical marketing. The licensed representatives will be required to disclose the number of contacts they've had with prescribing practitioners, the name and description of each drug they marketed, and any compensation provided to the practitioners. Additionally, they must disclose the wholesale acquisition cost of the drug and any information available on the efficacy of the drug marketed to different racial and ethnic groups. This section is modeled on language developed by the National Academy for State Health Policy and similar legislation that was adopted by the State of Oregon in 2022.

This proposed legislation aims to create accountability and transparency in the marketing of pharmaceutical products to contain and lower the cost of prescription drugs in the state and the country.

Jared Kosky, Deputy Commissioner, Insurance Department (CID):

While CID's direct role in this bill is limited, it is in alignment with their mission to protect consumers by enforcing state insurance laws and monitoring insurance carriers' financial practices. CID supports this bill and their role in Section 9 which requires OHS, in consultation with the CID, to analyze pharmacy benefit managers' practices and encourage transparency in pricing to identify options to reduce prescription drug costs. They welcome the opportunity to support this effort.

Sean Scanlon, Comptroller, Office of State Comptroller:

Comptroller Scanlon experienced chapters in his life when he and his single mother were uninsured and witnessed her putting off basic medical care while being unable to afford prescription medication. He later realized as an adult that his situation was not unique and is an experience shared with many other families in the state. The challenge has spread and become more dire in recent years.

The Office of the State Comptroller strongly supports two provisions of the bill. The first measure is to allow their office to create a drug discount card through the ArrayRx consortium, which negotiates discounts for prescription drugs. The second measure is to cancel medical debt for Connecticut residents using \$20 million in federal ARPA funds. They strongly support Governor Lamont's bold initiative to make Connecticut the first state in the nation to cancel medical debt. These efforts will provide immediate relief to families struggling with healthcare costs and emphasizes that access to affordable and quality healthcare is a top priority for Connecticut families and businesses.

William Tong, Attorney General, Office of the Attorney General (OAG):

The OAG supports this bill and its efforts to protect patients and prohibit unnecessary healthcare costs by taking several steps to strengthen the federal 340B drug discount program in Connecticut. This program permits participating healthcare organizations to access outpatient drugs at significantly reduced prices, benefiting vulnerable patients who lack insurance or are on Medicaid. However, some drug manufacturers are refusing to provide 340B drug discounts to participating healthcare organizations, which is becoming untenable to the safety net of these healthcare organizations. The bill precludes pharmacy benefit managers (PBMs), acting on behalf of insurers, from treating 340B healthcare organizations differently from other healthcare providers based solely on the 340B designation.

This bill also requires hospitals that serve low-income and underserved populations, and participate in the 340B discount drug pricing program, to annually report limited drug pricing data and information to the Office of Healthcare Strategy (OHS). This reporting enhances drug price transparency to ensure that populations and communities served by safety-net hospitals continue to benefit from this essential federal program.

In addition, the bill expands the Prescription Drug Monitoring Program (PDPM) to all drugs and devices dispensed by pharmacies and requires the collection of information associated with “deprescribing” medicine when they no longer produce positive outcomes for patients. This expansion provides additional tools for prescribers to better monitor drug interactions and eliminate unnecessary or harmful prescriptions.

The bill also strengthens the certificate of need (CON) program administered by OHS by providing OHS and the Office of the Attorney General with additional regulatory and enforcement tools. These provisions provide OHS the ability to retain consultants with expertise in the subject matter of the pending CON application at a cost to the CON applicant, which will strengthen OHS's ability to analyze complex financial and public health questions that frequently arise during a CON proceeding.

NATURE AND SOURCES OF SUPPORT:

Ellen Andrews, Executive Director, Connecticut Health Policy Project:

The CT Health Policy Project supports HB-6669, which aims to improve access to high quality, affordable healthcare in Connecticut. The current system to regulate healthcare is broken, and the Certificate of Need process has largely been ineffective. The Governor's bill includes meaningful penalties for entities that do not comply with CON approval conditions and requires independent consultants to monitor compliance. This bill also proposes measures to negotiate better drug prices, regulate drug company representatives' interactions with prescribers, study Pharmacy Benefit Managers, limit facility fees to actual hospital facilities, and develop a list of drugs with major price spikes. HB-6669 also proposes transparency and accountability for the federal 340B program to ensure it is being used to improve care for underserved communities. The CT Health Policy Project urges the Committee to pass HB-6669 to make healthcare more affordable and protect patients in Connecticut.

Ayesha Clarke, Interim Executive Director, Health Equity Solutions (HES):

Health Equity Solutions (HES) supports H.B. 6669, legislation that aims to reduce healthcare costs and increase access to care in Connecticut. The bill includes eliminating hospital facility fees charged at free-standing offices and clinics (Section 11), and stronger enforcement for Certificate of Need Requirements (Sections 12-14). HES believes these measures will make healthcare in Connecticut more affordable and pricing more transparent, especially for Black, Indigenous, Latino/a, and other people of color who are at greater risk of accruing medical debt. HES states that hospital monopolies are associated with lower quality of patient care and adverse outcomes, and that CON regulations help to ensure equitable distribution of healthcare resources, particularly in underserved communities.

Anna Doroghazi, Associate State Director, Advocacy and Outreach, American Association of Retired People Connecticut (AARP CT):

AARP CT supports sections 1, 9, and 10 of HB 6669, which aim to lower prescription drug prices and improve access to medication. Section 1 proposes the establishment of a prescription drug discount card program and participation in a multistate drug consortium. Section 9 requires reporting on pharmacy benefit manager practices, and section 10 lowers the inclusion thresholds for drugs on the Office of Health Strategy's list of outpatient prescription drugs provided at substantial cost to the state or critical to public health. AARP believes that these sections could result in more meaningful and actionable information for state officials, increase pressure to hold manufacturers accountable, and help payers determine whether a drug price or price increase is justified.

Lynne Ide, Policy Lead for Communications, Universal Healthcare Foundation of Connecticut:

Universal Health Care Foundation of Connecticut supports HB 6669 and specifically addressed Sections 12, 13, and 14 related to Certificate of Need (CON) in the proposed bill. The Foundation supports the direction of the bill but believes it does not have enough "teeth" to promote equity and support sustainable solutions to provide essential health services to rural and underserved communities. The Foundation suggests changes to Section 12 and 13, such as placing funds into an independent community fund to be used for health equity needs and allowing OHS to retain consultants with expertise in the subject matter of the pending CON application. The Foundation also supports Section 14(e), which allows the Attorney General to enforce a cease-and-desist order.

Sara LeMaster, Director, Government Relations and Public Policy, Community Health Center Association of Connecticut (CHCACT):

CHCACT supports Sections 16-18 of this bill to protect patient access to drugs and prohibit disparate treatment of 340B covered entities by pharmacy benefits managers. Their testimony explains that the 340B program allows patients to purchase drugs at significantly discounted rates, which is crucial for patients managing chronic conditions. The contract pharmacy model, which many health centers use, benefits patients by allowing them to access drugs through pharmacies in their neighborhood, and benefits health centers who may not have the space or financial resources to support an in-house pharmacy. This bill is important because it protects health centers and other 340B covered entities from attacks on the program that would limit their ability to promote community health and provide cost-saving services to the healthcare system. The bill also protects health centers' relationships with contract pharmacies and prohibits discriminatory contracting practices by pharmacy benefits managers.

NATURE AND SOURCES OF OPPOSITION:

Emily Boushee, Government Relations Manager, Connecticut Children's Medical Center (CCMC):

CCMC opposes House Bill 6669, which includes provisions that may hinder the ability to provide affordable healthcare. Section 11 limits billing for facility fees, which will significantly impact their finances. Sections 12-15 propose changes to the Certificate of Need process, which they support but request modifications to improve effectiveness and reduce regulatory burden. Section 19 requires annual reporting on the 340B program, which they believe is already regulated by the federal government and unnecessary. They rely on the 340B program to provide comprehensive services to eligible patients, regardless of income level.

Connecticut Hospital Association (CHA):

CHA opposes sections 11 to 15 and Section 19 of HB 6669. Section 11 prohibits facility fees, regardless of setting, for evaluation, management, and assessment of management services, which would have devastating financial consequences on Connecticut's hospitals and health systems. Section 11 also allows the Executive Director of the Office of Health Strategy to prohibit facility fees for any outpatient diagnostic and imaging services. Sections 12 to 15 increase the regulatory burden on hospitals and health systems and providers and add to the ability to punish providers, which CHA disagrees with. CHA suggests that legislative attention should be focused on improving and speeding up the Certificate of Need program, removing unnecessary costs, and reducing the regulatory burden on hospitals and healthcare systems.

Kathy Bilotas, Senior VP of Government Affairs, Ely Lilly and Company (Lilly):

Lilly submitted testimony in opposition to HB 6669 with specific concern regarding Sections 16-19 which require pharmaceutical manufacturers to extend federal 340B discounts to contract pharmacies, including for-profit entities. Lilly supports the 340B drug pricing program but believes patients should benefit directly from it. This bill allows for-profit pharmacies and hospitals to use the program to generate profit at the expense of patients. Lilly also states that the contract pharmacy provisions of HB 6669 raise significant legal concerns and attempt to override a recent ruling by the Third Circuit. They note that the federal 340B program has grown significantly since its inception and that documented noncompliance attributable to contract pharmacy expansion would be exacerbated by HB 6669.

Eric Arlia, Vice President, Pharmacy Services, Hartford HealthCare (HHC):

HHC supports the proposed changes that prohibit discrimination of pharmacies by pharmacy benefit managers and disallow manufacturers from imposing limits on the ability of covered entities to dispense 340B purchased drugs. However, they oppose parts of Section 19 which proposes a pathway for covered entities in Connecticut to report the financial relief they receive from the 340B program, stating that it would create tremendous administrative burden and may not be practical. Hartford HealthCare currently has five hospitals that are participating covered entities in the 340B program, which allows them to serve all patients in their community and offer community benefit programs directly or indirectly related to pharmacy care.

Vincent G. Capece, Jr., President and CEO, Middlesex Health:

Middlesex Health opposes HB 6669 and requests the removal of Section 11, which limits billing for facility fees, and Sections 12-15, which make changes to the Certificate of Need program. The COVID-19 pandemic has caused financial hardships for hospitals, and Section 11 will cut funding to hospitals. Regarding the Certificate of Need program, Middlesex Health believes it needs to be modernized and requests that the committee delete Sections 12-15 and add provisions to tighten timelines, expand imaging modalities, prohibit cost growth benchmarks, ensure equal standards, and provide technical assistance.

Sam Hallemeier, Director, State Affairs, Pharmaceutical Care Management Association (PCMA):

PCMA, a national trade association that represents pharmacy benefit managers (PBMs) who administer drug benefits for more than 275 million Americans, opposes HB 6669. This bill proposes language that would apply to self-funded employee welfare benefit plans, prohibit the use of claims modifiers in the federal 340B program, and grant covered entities a private right of action. PCMA states that the bill's language is unclear and troublesome, and that it would undermine the provision of cost-efficient drug benefits by employers, health plans, and unions on behalf of Connecticut residents. They also believe that the bill raises federal preemption concerns and should be opposed.

Kelly Memphis, Director, State Government Affairs, Healthcare Distribution Alliance (HDA):

HDA opposes this bill and proposes changes to the language of HB 6669 that would accurately reflect the role of wholesale distributors in the pharmaceutical supply chain and their contractual obligations. HDA is the link between pharmaceutical manufacturers and pharmacies and healthcare settings, and its members handle approximately 93% of US prescription drugs. As the bill language now stands, it conflates the definition of drug manufacturer and drug wholesalers, which are two distinct entities with separate roles in the supply chain. HDA proposes a separate definition for manufacturers and wholesalers, following the federal Drug Supply Chain Security Act (DSCSA) standard for a wholesale distributor, and clarifying that drug manufacturers alone will be held responsible for their actions. These changes will ensure that the legislation reflects preemptive federal law and the flow of the drug supply chain.

Paul Pescatello, Senior Counsel and Executive Director Connecticut Business & Industry Association Bioscience Growth Council (CBIA):

CBIA opposes HB 6669 as it attempts to force drug manufacturers to extend 340B drug pricing beyond the covered entities themselves to the pharmacies covered entities may contract with. They argue that this would undermine the integrity of the 340B program and compromise revenue that flows into Connecticut's Medicaid program. CBIA also criticizes the bill's provisions for a pharmaceutical sales representative licensure program, which are seen as unnecessary, given the extensive regulations already in place. CBIA further argues that a ban on drug samples is ill-advised and contradicts Connecticut's life sciences economic development efforts. Ultimately, HB 6669 will not lower drug prices but will add more complexity and cost to the healthcare system.

Jacqueline Blake, Yale New Haven Health System (YNHHS):

YNHHS opposes certain sections of HB 6669. Specifically, YNHHS requests to delete sections 11-15, and 19 from the bill.

Section 11 limits facility fee billing, which would cut funding to YNHHS and does not cover the entire cost of all services rendered. YNHHS suggests developing applicable reimbursement models in collaboration with payers and local employers.

Sections 12 through 15 propose changes to the Certificate of Need (CON) program, which YNHHS supports modernizing. However, YNHHS requests that provisions be added to facilitate a more expedient process without increasing regulatory burdens on hospitals.

Section 19 requires hospitals participating in the federal 340B drug pricing program to file certain reports starting on January 15, 2024. YNHHS argues that the reporting requirements are unnecessary since 340B hospitals are already subject to extensive reporting requirements and would divert resources away from patient care. Instead, YNHHS suggests focusing on the intent of the 340B program, which is to help hospitals stretch scarce resources to provide more comprehensive services to more patients.

Jennifer Schneider, Regional Chief Financial Officer, Trinity Health of New England:

Trinity Health of New England opposes several sections of HB 6669. They request the deletion of Section 11 which limits billing for facility fees, Sections 12 to 15 which modify the Certificate of Need program, and Section 19 which requires annual reporting on the 340B program. Trinity Health states that the implementation of Section 11 will have a devastating impact on their finances, which are already strained due to the COVID-19 pandemic and underpayment by Medicare and Medicaid. They also suggest revisions to the Certificate of Need program that would improve its efficiency and effectiveness without increasing regulatory burden. Finally, Trinity Health argues that the 340B program is an essential safety-net for the poor and underserved in their community, and that Section 19 imposes costly and unnecessary state reporting requirements on the program.

Kathleen Silard, President & CEO, Stamford Health:

Stamford Health, a non-profit healthcare system, requests the elimination of the facility fee proposal of HB 6669. This bill limits billing for facility fees, which hospitals use to reimburse additional costs imposed on them for complying with Medicare conditions of participation and Joint Commission requirements. Stamford Health believes the elimination of facility fees would result in a severe impact, reducing revenue by over \$110 million annually, and it would be forced to take drastic action to ensure financial stability. The bill would also essentially prevent hospitals from billing Medicare for services using a payment methodology established by federal law and regulation, which would violate contracts between sophisticated actors in a complex market.

Others in Opposition to this Bill:

- **Susan Israel, MD, HITAC**
- **Laura Srebnik, Director, State Government Affairs- Eastern Region, Biotechnology Innovation Organization (BIO)**
- **Jaimie Cavanaugh, Attorney, Institute for Justice**

- **Amanda Gunthel, President, Connecticut Association of Ambulatory Surgery Centers (CAASC) and Connecticut Orthopedic Society**
- **Susan Halpin, Connecticut Association of Health Plans**
- **Peter Pitts, President, Center for Medicine in the Public Interest (CMPI)**
- **Kelly Ryan, Pharmaceutical Research and Manufacturers of America (PhRMA)**

Reported by: Kate Hamilton

Date: March 29, 2023