
December 23, 2019

**Rep. Dominique Jackson
Colorado General Assembly
200 E Colfax, Room 307
Denver, CO 80203**

**Rep. Dylan Roberts
Colorado General Assembly
200 E Colfax, Room 307
Denver, CO 80203**

**Senator Joann Ginal
Colorado General Assembly
200 E Colfax, Room 307
Denver, CO 80203**

Dear Rep. Jackson, Rep. Roberts, and Sen. Ginal,

On behalf of the Colorado BioScience Association (CBSA), thank you for the opportunity to share additional comments and recommendations on the draft prescription drug price transparency bill. We appreciate your commitment to gathering stakeholder input.

CBSA represents over 720 life sciences organizations across Colorado that drive innovations, products, and services to improve and save lives. Our state is the center of bioscience for the Rocky Mountain Region, directly employing 30,000 people and spinning out an average of 20 new bioscience companies each year. Our members play a crucial role in the development of breakthrough technologies and therapies that are leading to reduced health care costs and improved patient outcomes.

Additional comments on the draft bill are outlined below, along with language recommendations that we believe would address our main concerns. We are happy to discuss our comments in greater detail or answer any questions you may have.

Sharing Rebates with Patients at Point of Sale

As we communicated in our first letter, CBSA shares your goal of lowering out-of-pocket costs for patients, which is why we strongly support sharing rebates with patients at the point of sale. In recent years, we have seen a significant shift in insurance benefit design, as more patients are exposed to more costs in the form of high deductibles, coinsurance, and high cost-sharing plans.¹ This shift has contributed to affordability challenges at the pharmacy counter, as more patients are exposed to the full retail price of a medicine when they pick up their prescription.

¹ IQVIA Report. "Patient Affordability Part One: The Implications of Changing Benefit Designs and High Cost-Sharing." Devane, Harris, Kelly. Plymouth Meeting, PA; May 18, 2018.

One way to address this growing problem is to ensure rebates are shared with patients at the point of sale. As we've outlined previously, studies have shown that such policies can significantly lower out-of-pocket costs, particularly for patients with chronic diseases, and with minimal impact on premiums. An analysis conducted by Milliman in 2017 showed that sharing negotiated rebates with patients at the point of sale could save some commercially insured patients with high deductibles or coinsurance between \$145 and \$800 per year. The impact on premiums was less than one percent.²

We hope you will consider the significant impact shared rebates could have on the cost individual patients pay for their medication and the likely increase in medication adherence and improved patient outcomes that would result. We urge you to incorporate language in the bill that ensures rebates are shared with patients at point of sale.

Advance Notice of Price Increases

CBSA strongly opposes the requirement for manufacturers to provide 90 days advance notice of a price increase to the Commissioner of Insurance and registered purchasers. We have concerns that mandating advance notice of a price increase will disrupt the drug market in other states and could create opportunities for price coordination.

Advance notice also does nothing to reduce the cost to patients. Alternatively, if the bill included a requirement to pass rebates to patients at the pharmacy counter as outlined in the previous section, we could significantly lower out-of-pocket costs for patients in high deductible or high coinsurance plans. In particular, a requirement to share price protection rebates with patients would ensure that patients are held harmless from any increase in wholesale acquisition cost (WAC) and would make advance notice reporting unnecessary.³ For these reasons, we urge you to remove this requirement or at least reduce it to one day advance notice of a price increase.

Protecting Confidential Information

While we appreciate language in the bill that is aimed at protecting confidential information, we do not think those provisions are adequate in ensuring sensitive business information is protected from public disclosure. In particular, we strongly oppose current language that gives the Commissioner of Insurance the authority to determine what is considered proprietary or confidential. We urge you to give that authority to the owner of the information (health insurer, manufacturer, pharmacy benefit manager, or nonprofit organization). We also urge you to remove current language that allows confidential and proprietary information to be disclosed through a Colorado Open Records Act request. Allowing any member of the public to access confidential information undermines every protection in the bill.

Below we have included specific recommendations to address our concerns on confidentiality.

10-16-1206 (1)

- Add the following language on page 14, following line 6. (Note: this language was included in California's drug price transparency bill, Senate bill 17.)
 - *The manufacturer may limit the information reported pursuant to subdivision (1) to that which is otherwise in the public domain or publicly available.*

² Milliman Analysis commissioned by Pharmaceutical Research and Manufacturers of America. "Point of Sale Rebate Analysis in the Commercial Market: Sharing Rebates May Lower Patient Costs and Likely Has Minimal Impact on Premiums." Bunger, Gomberg, Hunter and Petroske. Washington, DC; October 2017.

³ Price protection rebates are negotiated between PBMs and drug manufacturers. It is a payment from a manufacturer to the PBM or insurer that holds them financially harmless when a manufacturer increases a drug's wholesale acquisition cost (WAC).

10-16-1206 (1)

- Add the following language on page 14, following line 22. (Note: this language is included in California's drug price transparency bill, Senate bill 17.)
 - *The manufacturer may limit the information reported pursuant to subdivision (2) to that which is otherwise in the public domain or publicly available.*

10-16-1209 (1)(b)

- Give the owner of the reported information the authority to determine what is considered proprietary. Updated language is included below. (Page 18, lines 21-27)
 - *If a health insurer, manufacturer, pharmacy benefit management firm, or nonprofit organization claims that information contained in a report submitted to the Commissioner is proprietary in accordance with section 24-72-204 (3)(a)(IV), the Commissioner shall redact the specific items from the information posted on the Division's website.*

10-16-1209 (2)(a)(III)

- Give the owner of the reported information the authority to determine what is considered proprietary. Updated language is included below. (Page 20, Lines 7 – 19)
 - *If a health insurer, manufacturer, pharmacy benefit management firm, or nonprofit organization claims, pursuant to subsection (1)(b) of this section, that information contained in a report submitted to the Commissioner is proprietary in accordance with section 24-72-204 (3)(a)(IV), the Commissioner shall exclude that information from the report prepared pursuant to this subsection (2). If the Commissioner contracts with a disinterested third party to conduct the analysis, the disinterested third party shall not disclose to the public or any person outside the division any information a health insurer, manufacturer, pharmacy benefit management firm, or nonprofit organization determines is proprietary pursuant to subsection (1)(b) of this section.*

10-16-1209 (1)(b)

- Remove the following language (page 19, lines 5 and 6) that allows confidential and proprietary information to be disclosed through a Colorado Open Records Act request.
 - *Except as otherwise required pursuant to Part 2 of Article 72 of Title 24*
- Add the following language after Section 1 (page 23) to protect confidential information from public disclosure. (Note: this language is included in California's drug price transparency bill, Senate bill 17.)
 - *In order to protect proprietary, confidential information regarding health care service plan and health insurer prescription drug utilization and spending information that is specific to the plan or insurer and to protect the integrity of the competitive market, it is necessary that this act limit the public right of access to that information.*

Thank you again for the opportunity to share additional feedback on this legislation. If you have questions or would like to discuss further, please contact us at Jjones@cobioscience.com or Eroberts@cobioscience.com.

Sincerely,



Jennifer Jones Paton
President & CEO
Colorado BioScience Association



Emily Roberts
Vice President
Colorado BioScience Association

