

Advisory Task Force on Lowering Pharmaceutical Drug Prices

Working Group #1: “Past and Current Legislative Regulatory and Law Enforcement Strategies Group”

May 29, 2019

5:30 p.m. – 7:30 p.m.

MN State Capitol Attorney General’s Office, Suite 102

Members attending: Chair Dr. Cody Wiberg (CW), Sen. Matt Little (ML), Rep. Rod Hamilton via phone (RH), Shilynn LaChapelle (SL), Nicole Smith-Holt (NSH)

Public attending: Rep. Robert Bierman (RB), Donovan Hurd (DH)

AGO staff attending: AAG Ben Velzen, Willow Fortunoff, Shawna Audette

Opening Remarks by AAG Ben Velzen on the Work Group Objective.

Work Group objective: “Evaluate and assess the effectiveness of past and current federal and state legislative, regulatory, and law enforcement actions in lowering drug prices.”

- The results of the working group’s research on this topic will inform one section of the task force’s final report.
- An outline of this section, and the report as a whole, will be presented to the full working group on June 18 for review and comment.

Agenda reviewed and discussed.

Presentation: Past and Current Legislative and Regulatory Actions.

Dr. Cody Wiberg presented the group with background research into past and current legislative and regulatory actions.

- How have legislative and regulatory bodies been used in the past to attempt to address drug prices?
 - Sources from research:

- National Conference of State Legislatures (NCSL) Prescription Drug Policy Resource Center (<http://www.ncsl.org/research/health/ncsl-prescription-drug-policy-resources-center.aspx>)
 - Drug Pricing Lab from Memorial Sloan Kettering Institute (<https://drugpricinglab.org>)
 - Prescription Drug Pricing: A Health Affairs Collection (https://www.healthaffairs.org/pb-assets/documents/Collections/Collection_CMWF_Prescription_Drug_Pricing_May_2018.pdf)
- CW presented strategies being considered or being tried by other states, according to NCSL: (CW is speaker when not otherwise noted)
 - Importation of drugs (may not work) and parallel importation of drugs (done by federal gov't level). For importation of drugs: It is illegal in Canada to trans-ship drugs. There are safety issues with counterfeit drugs on Canadian internet drugs. Also, there is not enough importation in Canada (35 million people) to distribute to all of America (325 million). Parallel pricing is where a portion of the drugs are purchased at prices from another country, example: UK imports 20% of drugs from Southern European countries with high standards, and simply repackages the drugs.
 - National Drug Price Control System. Debate that then drug manufacturers won't be able to afford to do the research they need to do. Evergreening is a problem with drug manufacturers to extend the patents.
 - Support further University research, which is public funding.
 - (RH) It is possible to take action as a state to pass laws or petition Congressional delegates to take action at a Federal level.
 - (RH) Hamilton is getting letters from citizens who go to Mexico to get insulin, which are about 90% cheaper. (NSH) went to Canada and saved thousands on other drugs.
 - Regulation of pharmacy benefit managers
 - PBM transparency
 - Fiduciary responsibility (should look out for the interest of the insurers and their patients)
 - Manufacturers have raised list price, so that if PBM add to formulary, then the manufacturer would give a rebate. Unfortunately, PBMs are not giving the rebates to patients. Prices seem artificially raised. Would eliminating rebates eliminate the problem?
 - Eliminating rebates may lead to increased transparency.
 - Requiring rebates and discounts to be applied at the retail pharmacy level. PBMs argue that the rebates are being used to lower premiums, so consumers may pay more for premiums if rebates are eliminated.

- (ML) What will get PBMs to change behavior? Does PBM transparency even help? We need to stay ahead of PBMs as they will always try to get around whatever the law says.
 - (RB) No matter what we do in the legislature, PBMs will go around it.
- (CW) Other countries have a drug price control. Does that stifle research?
- Manufacturer drug pricing transparency was tried this session, and in other states.
- Manufacturer anti-price gouging, four states have tried.
- Volume purchasing program (potential possibility). Does not directly benefit public. MNCAP is an example, that negotiates with manufacturers to get lower list prices for government run facilities. Dept of Corrections can purchase from the MNCAP prices too. One proposal: have state of MN do the contracting for all 5.5 million Minnesotans. (RB) A potential drawback would be if drug companies refuse to sell in MN.
- (NSH) Public Utility Commission – Massachusetts looking at pharma as a utility
 - (CW) Economically, it makes sense to look at pharma as a utility
 - (NSH) Bright Care Alliance out of Boston is trying to tackle pharma problems at a federal level
 - (ML) Don't shy away from congressional policies
- (ML) Behind the counter ideas for less dangerous drugs, like insulin, EpiPen, etc.
- (SL) Engage the community: social media, news conferences, U of M professors, etc.
- Potential Congress regulation of formularies
- Lawsuits against manufacturers
 - Anti-trust/price fixing
 - Marketing the spread
 - Marketing for off-label uses
 - Kickbacks or other illicit payments to prescribers
- Coupon restrictions. Coupons can save individuals, but costs the system as they are only for brand name drugs.
- Academic detailing or Counter-detailing has been introduced twice in MN. Pharmacy sales reps used to tell physicians the details of drugs, but were biased. Idea: pharmacists at College of Pharmacy tell about older/other drugs that are also effective.
- Pharmaceutical sales reps are licensed in DC. Cannot market off label, makes them accountable.
- Regulation of insurance/drug benefits
 - Max out of pocket expenses, like Colorado
- Taxes on drugs/fess on pharmaceutical manufacturers
- Generic substitution / biosimilar substitution / therapeutic substitution
 - Generic substitution was mandated if cheaper

- Biosimilars are not true generics, but MN pharmacists can substitute biosimilars now
- Therapeutic substitution would mean pharmacist could substitute a similar but not the same drug, in the same class.
 - Drug-only state benefit programs
 - Regulating advertising, only New Zealand offers direct to consumer other than America. Drives up the cost as people think they need additional drugs.
- (CW) In America, drug effectiveness is measured when compared to placebo. In the UK, if the drug is better than what is currently available on the market, then prices can be higher.
- (ML) We should identify any loopholes in these potential strategies in order to make them as comprehensive as possible.

Future speakers: Prof. Paul Nolette is available as a speaker

Future meetings:

- A public listening session scheduled for June 11 at the Chaska Community Center. Members are encouraged to attend and invite others.
- The next full Task Force meeting is scheduled for June 18, 2019 at 5:30 p.m. at the State Capitol.
- Work Group #1 will meet next on June 26 at 5:30pm, possibly at the Board of Pharmacy office.