Oppose Senate Bill 351

Senate Financial Institutions and Insurance Committee

February 14, 2018

Submitted by Larrie Ann Brown, KS Legislative Counsel

Chairman Longbine and members of the committee, thank you for the opportunity to submit testimony in opposition to Senate Bill 351.

Express Scripts is one of the nation's largest pharmacy benefits managers, managing the prescription drug benefit for 80 million Americans. We improve health outcomes by making the use of prescription drugs safer and more affordable. Express Scripts administers pharmacy benefits for Kansas employers, health plans, labor unions, Medicare beneficiaries, and TRICARE, the health plan for active-duty military, retired military and their dependents.

We appreciate the opportunity to address what Senate Bill 351 requires. We are open to the patient-protection provisions of the bill that ensure that patients pay the lowest possible price for their medications, which should include allowing a pharmacist to communicate with patients about alternative drug options. We oppose wording, however, that goes beyond patient protections and attempts to shield pharmacies from market-based reimbursement contracts as well as the anti-mail provisions in the bill that limit the ability of plan sponsors to choose to establish and offer lower cost network arrangements.

At Express Scripts, we believe our members absolutely must have full line of sight as to what a drug will cost them, and should know if there are opportunities to decrease that cost. We also believe patients should always pay the lowest price possible, whether that is their plan's copayment, or their pharmacy's cost for the medication, whether that is called a Usual and Customary (U&C) cost or a cash price.

Employers know lower copayments help their members stay on track with their prescription therapy, and do all they can to help keep these copays as low as possible. However, there are instances, particularly with low-cost generics, where a pharmacy's price for a medication is less than a patient's established copay.

In any instance when the price for a medication at a particular pharmacy is less than the copay associated with that formulary tier, our members pay the lower price, their drug utilization is captured in our claims system, which allows members and pharmacists to benefit from our real-time clinical safety reviews of a patient's medications.

Section 1(c)(1), page 1, lines 22 – 26, does more than ensure that a patient pays the lowest possible price for a drug. It also shields pharmacies from performance-based contracts by saying that a cost-sharing requirement cannot exceed "the amount retained by the pharmacist or pharmacy from all payments sources." Performance-based contracts include quality standards and metrics (i.e., adherence rates in treating certain disease states, generic dispensing rates, patient counseling, etc.) that are determined after the point of sale; in short, adjustments that could be made only after performance had been measured over time.

Section 1(c)(4), page 2, lines 3 – 7, essentially attempts to freeze a claim and any reimbursement adjustments at the point of adjudication. That is another way to negate performance-based contracting. Depending on what is meant by a fee that is "disclosed" at the time, it could also prohibit any transaction fees that are laid out in contracts with pharmacies but not might appear on a pharmacists' screen at the point of adjudication. Other adjustments could be related to things like a pharmacy claim being processed in the wrong network or under the wrong benefit, or a pharmacy claim accidently processing twice, rates being incorrectly loaded into the system, etc. There are errors that do occur that would require correction and practical and legitimate adjustments to be made – adjustments that in some cases could be to the benefit of the pharmacy itself.

Finally, Section 1(c)(6) and (7) limits the ability of payers and plan sponsors to have to the flexibility to establish different types of network arrangements (i.e., broad, limited, specialty, mail preferred) that they can offer and which have been shown to achieve substantial cost savings, improve and increase adherence, and improve patient outcomes.

It is for the above reasons that we respectfully oppose SB 351 in its current form.