

Senate Health and Human Services Committee

Kyle Baker 271-2609

SB 238-FN, relative to the usual and customary price of filling a prescription.

Hearing Date: February 7, 2017

Time Opened: 2:15 p.m.

Time Closed: 2:45 p.m.

Members of the Committee Present: Senators Bradley, Avar, Gray, Fuller Clark and Hennessey

Members of the Committee Absent : None

Bill Analysis:

Sponsors:

Sen. Soucy

Sen. Reagan

Rep. McGuire

Who supports the bill: Senator John Reagan, SD# 17; Senator Donna Soucy, SD# 18; Rick Newman, NH Independent Pharmacy Assoc.; Curtis Barry, Express Scripts; Fran Wendelboe, NHIPA; Paula Rogers, Anthem

Who opposes the bill: None

Who is neutral on the bill: Tyler Brannen, NHID; Marty Mobley, NHID

Summary of testimony presented in support:

Ryan Mahoney – Senate Minority Policy Director

- Introducing for Senator Soucy
- Bill defines to term “usual and customary price”
- This term is not defined in the statute, and the Department of Insurance has been trying to define it on their own.
- The department was met with opposition from several pharmacy organizations and institutions before JLCAR.
- This bill would resolve the issue of usual and customary and clarify the rulemaking authority of the DOI.

Rick Newman – NH Independent Pharmacy Association

- Support bill
- This bill has undergone a long process to come up with the changes made by

the sponsor.

- During the rulemaking process the definition of “usual and customary charge” was attempted to be changed and that was met with some problems.
- This bill would clarify in statute what the definition is, very similar to what federal government uses for Medicare.

Sen. Bradley – Are you working with Anthem on an amendment to this bill?

Newman – Anthem is planning to bring an amendment in on a different topic and we are in support of that amendment.

Beth Sargent – NH Pharmacists Association

- Pharmacy benefit managers have definitions in their contracts with similar wording to this bill.

Paula Rogers – Anthem Blue Cross/Shield

- The underlying bill was not a problem for Anthem.
- Pending in JLCAR there is a proposal to change the definition and Anthem is opposed to that definition.
- Another rule pending in JLCAR has to do with prior authorization forms which say that every drug that has a prior authorization requirement would use one specific form that once filed out is finalized.
- In rulemaking we have come up with one form which is very rigid, which could be put into effect at the end of the year.
- There are drugs that have specific prior authorization forms and this could be used by the provider to make sure the complexities are taken into consideration.
- Would like to introduce an amendment that would allow providers to use a different prior authorization form for specific drugs.
- The form would be provided by the insurer and would be at the discretion of the provider only.

Sen. Bradley-Have you showed this to interested parties?

Rodgers- I have floated it by the medical society and talked with the insurance department.

Bradley- Everyone seems to be on board with this bill, we will wait a week or so and get in contact with more interested parties and consensus with the language.

Fran Wendelboe – NH Independent Pharmacies

- There is an interpretation of "Usual and Customary" which was generally accepted
- When the DOI tried to move this rule through JLCAR that is where our objection comes from. The definition that DOI was using was different from the current interpretation already being used.

- Supports this bill if there is consensus and it is done legislatively

Summary of testimony presented in opposition:

Neutral Information Presented:

Tyler Brannen – NH Insurance Department

- Neutral on this bill
- This bill would provide regulatory clarification on this definition.
- There would be a cost increase for some.
- DOI cannot regulate this process due to the law being under pharmacy statute.
- The problem with the use of “Usual and customary” has been litigated many times regarding the definition and what pharmacies are charging.
- DOI only has rulemaking authority over fully insured customers (about 50%)
- In case of complaint, DOI’s hands are tied when it comes to a self-funded employer.
- There is a rulemaking process ongoing to define usual and customary.
- Provided an example for how usual and customary is used.

Senator Fuller Clark – So your saying that we need clarification on the definition but if we use this definition people could end up paying more?

Brannen – By using this definition many patients might be being paying more.

Senator Fuller Clark - So is there other language that should be used to prevent this, and did you provide this?

Brannen - No, although we would be happy to help draft it.

Senator Fuller Clark - Would this alternate language make it so the patient will not pay more?

Brannen -Yes.

Senator Fuller Clark – Would you agree that although the case you gave us is a small amount, in reality many drugs are very expensive. At that point the cost to the patient could be very harmful?

Brannen – Yes. The cost of drugs is going up, along with peoples copays. There are about \$15-20 million dollars spent on drugs where the copay exceeds the cost.

Future Action: Pending

KRB

Date Hearing Report completed: February 10, 2017