



# State Approaches to Addressing Prescription Drug Costs



**HEALTH POLICY INSTITUTE OF OHIO**

**A CLOSER LOOK AT WHAT STATES ARE  
DOING TO CONTROL DRUG COSTS**

**AUGUST 23, 2018**

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# NASHP



- Non-profit
- Non-partisan
- Portland, ME & WDC
- 31 years
- Academy: cross-agency group of state leaders
- Annual conference: state officials from 50 states
- Pharmacy Cost Work Group
  - Funded by Laura and John Arnold Foundation
  - Issued 11-point policy proposal in October 2016



# Why Are States Acting?



## A. Costs

- Rx costs rapid & unpredictable; specialty drug-driven
- State Medicaid Rx spend ↑ 25% 2014, 14% 2015
  - CMS predicts 6% growth 2016 – 2025

## B. Balanced Budget Requirements

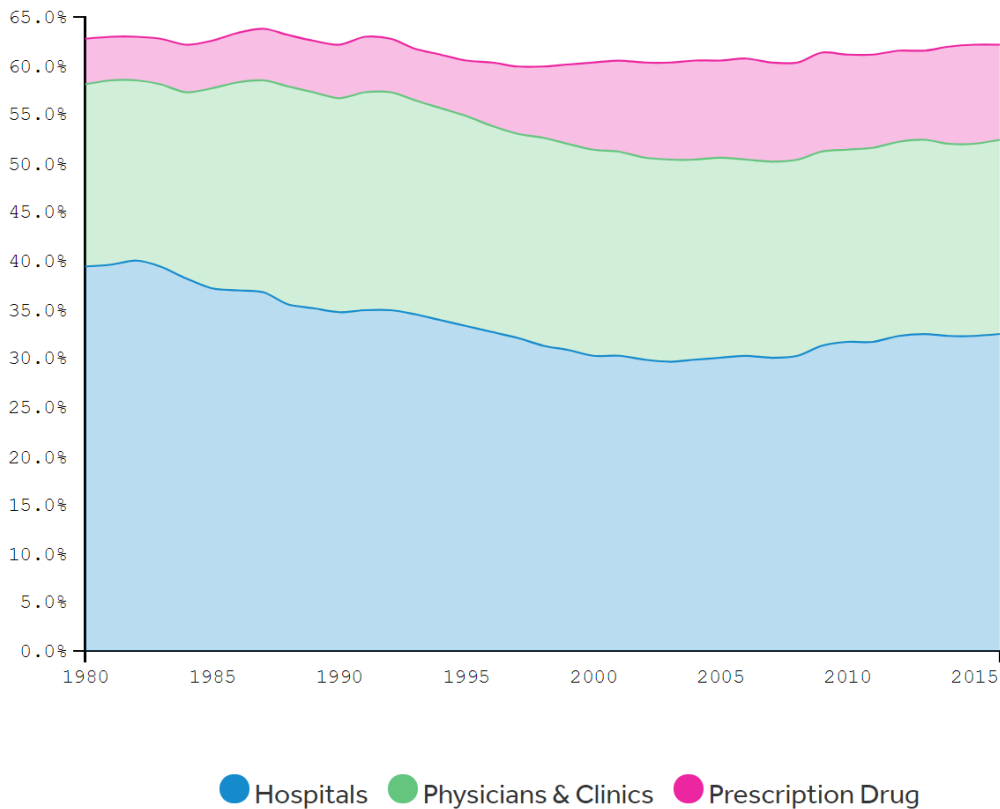
## C. States Lack Commercial Tools

- Closed Formularies and Co-pays

## D. States Can't Wait For Feds

- Blueprint on Drug Prices not likely to bring relief to states
  - Demo's require states to opt out of MDRP entirely

# Drug Spending in Context



**Source:** Kaiser Family Foundation analysis of National Health Expenditure (NHE) data from Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group



# How Are States Approaching Rx Costs?



- 1) Legislation
- 2) Medicaid initiatives
- 3) Take-aways

# How Are States Approaching Rx Costs?



- 2018 Session: 160 Bills
- 24 States Passed 37 New Laws:
  - PBMs – 84 Bills (26 laws in 18 states)
  - Transparency – 26 Bills (7 laws: OR, VT, ME, NH, CT, CA\*, NV\*)
  - Importation – 8 Bills (1 law: VT)
  - Price Gouging – 12 Bills (1 law: MD\*)
  - Rate Setting – 3 Bills: MD, NJ, MN

(\* = enacted in 2017)

# PBMs



## Common provisions for state regulation of PBMs:

- Ban gag clauses prohibiting pharmacists from offering consumers the lowest price
- Require state licensure of PBMs
- Require PBMs act as fiduciaries
- Require PBMs to report rebates

# PBMs: Lessons Learned



- Define rebates as all payments between manufacturers and PBMs
- PBMs are part of the problem, not *the* problem



# Transparency Laws



- **CA (SB17)** – Requires advance notice of price increases  
/ 60-day notice by manu’s of increases >16% within previous 2 yrs.  
/ Insurers report top 25 drugs (frequently prescribed/spending/cost increases)  
/ PhRMA challenged; implementation in progress since Jan. 2018
- **NV (SB539)** – Essential diabetes drugs only  
/ PhRMA and BIO challenged (disclosure of proprietary info.)
- **OR (HB 4005)** – Similar to CA; rule-making in progress
- **CT (HB 5384)** – Threshold: 20% in 1 yr or 50% in 3 yrs;  
/ Insurers report top drugs (cost/cost increases)
- **VT (S 92)** – update to 2016 law
- **ME (LD 1406) and NH (HB 1418)** - Studies

# Transparency: Lessons Learned



- **Proprietary information:**
  - Don't collect unless necessary
  - Create mechanisms to protect
- **Make sure the information is actionable**
- **Don't “demonize” industry; work collaboratively to avoid undue reporting requirements to ensure compliance**

# Price Gouging



- **Maryland law (MD 631):**
  - Allows AG to take action against “unconscionable” price increases and impose fines & refunds for consumers if AG determines price gouging took place
  - Generic/off-patent drugs
  - AAM challenge: 4<sup>th</sup> Circuit ruling; MD AG deciding whether to appeal to SCOTUS (Oct.)
- **Lessons Learned:**
  - Define “unconscionable”
  - Make clear law applies to drugs sold within state only

# Rate Setting / Drug Affordability Review



- Similar to a public utility rate setting model
- Would establish a drug affordability review commission to review high cost drugs and, when necessary, set rates state will pay
  
- Maryland (HB 1194/1023)
  - 5 person drug cost review commission
  - Passed House; stalled in Senate

# Wholesale Importation from Canada



- Passed in VT (S175)
- Study in Utah
- NASHP TA to VT :
  - Designing a program to meet safety and cost-savings requirements for approval by fed's
  - Azar recently signaled support for importation
  - VT must approve program design including funding mechanism
  - State will contract with a wholesalers

# Medicaid Initiatives



- MA: Waiver to enable closed formulary was denied
- NY: Drug spending cap with process to negotiate supplemental rebate contracts
- OH: PBM rebates must be passed through to Medicaid health plans

## NASHP Grantees:

- OK: APM for prescription drug through existing rebate structure; SPA approved July 2018; 1<sup>st</sup> contract signed
- CO: APM for physician-administered drugs (PADs)
- DE: Cross-agency formulary



# Take-Aways



- 1) Transparency is a first step, - necessary but not sufficient.
  
- 2) Transparency is needed across the entire supply chain
  
- 3) States need policy approaches with teeth:
  - Anti-price gouging measures
  - Rate setting / drug affordability review
  - Commercial sector tools to enable negotiation

# NASHP Center for State Rx Pricing Website



Find the status of state legislation to curb prescription drug costs on NASHP's tracker:

- <https://nashp.org/state-legislative-action-on-pharmaceutical-prices/>
- New Laws 2017-2018: <https://nashp.org/new-laws/>

Other available resources include:

- Model legislation on Transparency, Rate Setting, Importation & PBMs <https://nashp.org/model-legislation/>
- Legal Resources: <https://nashp.org/legal-resource-center/>
- Glossary of Rx Terms: <https://nashp.org/glossary-of-pharmaceutical-terms/>





# Questions?



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