Report to the Vermont Legislature on Pharmaceutical Drug Cost Transparency in Accordance with 18 V.S.A. § 4635

Submitted to: Committee, General Assembly, etc.

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Attorney General's Report on Prescription Drug Cost Transparency
Pursuant to 18 V.S.A. § 4635
November 29, 2024

OVERVIEW

This report is submitted pursuant to 18 V.S.A. § 4635 ("Prescription Drug Cost Transparency"). The statute requires that the Attorney General's Office ("AGO") provide a report to the General Assembly on an annual basis. This report focuses on information provided to the AGO by the Department of Vermont Health Access ("DVHA"), Blue Cross and Blue Shield Vermont ("BCBSVT") and MVP Health Care ("MVP") for calendar year 2023.[1]

I. Information Provided by the Department of Vermont Health Access

Pursuant to 18 V.S.A. § 4635, DVHA and health insurers with more than 5,000 covered lives in Vermont for major medical health insurance (referred to below as "Health Insurers") are required to provide certain information annually about the increase in the price of prescription drugs.

The statute requires that DVHA create two lists. The first, required by 18 V.S.A. § 4635 (b)(1)(A), is comprised of 10 prescription drugs (at least one generic and one brand name) on which the State "spends significant health care dollars" and for which the wholesale acquisition cost ("WAC") [2] has increased by 50 percent or more over the past five calendar years or by 15 percent or more during the previous calendar year. DVHA must rank the drugs on the list from

[1] The AGO's 2019 report was prepared after discussing with Legislative leaders the challenges of complying with the reporting requirements of the statute. The same format is used in this report as was used from 2019 to 2023. The AGO looks forward to working with the Legislature to address the compliance challenges presented by, among other things, federal law which prohibits Medicaid from providing drug-specific net cost information.

[2] WAC is defined under federal law as a manufacturer's "list price" for a drug to wholesalers or other direct purchasers but does not reflect any prompt pay or other discounts, rebates, or reductions in price. 42 U.S.C. § 1395w-3a (c) (6).

those with the largest to smallest increase, and state whether it considers any of the drugs to be specialty drugs; whether the drugs were included based on their price increase over one year, five years or both; and provide DVHA's total expenditure for each drug.

The second list, required by 18 V.S.A. § 4635 (b)(1)(B), is comprised of 10 prescription drugs (at least one generic and one brand name) on which the State "spends significant health care dollars" and for which DVHA's net cost[3] has increased by 50 percent or more over the past five years or 15 percent or more during the previous calendar year. DVHA must rank the drugs on the list from those with the largest to smallest increase, state whether it considers any of the drugs to be specialty drugs, and whether they were included based on their price increase over one year, five years or both.

DVHA's 2023 WAC list, Net Cost list, and an explanation of the drug selection criteria it used for each are attached as Exhibit A.

II. Information Provided by Vermont Health Insurers

Pursuant to 18 V.S.A. § 4635 (b)(1)(C), the Health Insurers are also required to create a list of 10 prescription drugs (at least one generic and one brand name) on which the insurance plan "spends significant health care dollars" and for which the insurance plan's net cost[4] has increased by 50 percent or more over the past five years, 15 percent or more during the previous calendar year, or both. Each Health Insurer must rank the drugs on the list from those with the largest to smallest increase and state whether it considers any of the drugs to be specialty drugs. BCBSVT and MVP are the two health insurers who have made annual submissions. The public

[3] "Net cost" is defined in 18 V.S. A. § 4635 (b)(1)(B) as the cost to DVHA net of rebates and other price concessions.

[4] "Net cost" is defined in 18 V.S. A. § 4635 (b)(1)(C) as the cost to the insurance plans net of rebates and other price concessions.

versions of the 2023 net cost lists provided by BCBSVT and MVP are attached hereto as Exhibits B and C, respectively. 18 V.S.A. § 4635 (b)(1)(C)(i). Health Insurers also provide the AGO with a list that includes the actual net dollars they spent on each drug. That list is exempt from public inspection pursuant to 18 V.S. A. § 4635 (b)(1)(C)(ii).

III. Factors That Influence Manufacturers' Drug Pricing

As observed by the AGO in previous Prescription Drug Cost Transparency reports, manufacturers have identified several factors they consider in making pricing decisions, although the weight they place on those factors seems to vary. The factors commonly mentioned as impacting manufacture's decisions to increase prices are listed below, in no specific order:

- the value of innovative medicines;
- cost effectiveness (meaning the economic value to patients given the effectiveness of the drug, compared to other drugs in the same class);
- the size of the patient population for the drug;
- investments made (including in research and development) and risks undertaken;
- return on investment;
- fiduciary responsibilities;
- post-marketing regulatory commitments and ongoing pharmacovigilance (safety surveillance);
- creation and maintenance of manufacturing facilities and capabilities, including the ability to address drug shortages caused by production issues;
- cost of ingredients;
- competition, including for drugs in the same class;
- the rate of inflation; and

- percentage of sales in commercial versus Medicare or other government channels, and the funds expended on assistance programs for people with limited resources or without insurance which, in some measure, offset drug sales income.

IV. Analysis of Cost Information Submitted by DVHA and the Health Insurers

As mentioned above, the Health Insurers provide the AGO with their net dollar expenditures on a confidential basis. Because federal law prevents DVHA from disclosing the net prices it pays for individual drugs, it is unable to provide the AGO with the prices actually paid, even on a confidential basis. 42 U.S.C. § 1396r-8(b)(3)(D). DVHA has provided the gross dollar amount (WAC) it paid for individual drugs, as depicted in Exhibit A, but those figures do not exclude any rebates or other price concessions it receives. As a result, it is not possible to compare DVHA's net drug costs to the Health Insurers' net drug costs.

A. How DVHA and the Insurers Selected the Drugs on the Lists

18 V.S.A. § 4635 permits DVHA and the Health Insurers to compile their lists based on either drug price increases of 50 percent or more over the past five years or 15 percent or more during the previous calendar year. To be consistent and to maximize comparison of the lists, DVHA and the Health Insurers agreed to select their 10 drugs based on an increase of 15 percent or more during calendar year 2023.

B. DVHA and the Health Insurer Drug Price Increases

1. DVHA

DHVA provided three charts. Chart 1 is its WAC chart and Chart 2 is its Net Cost chart. Chart 3(which is not statutorily required) is a historical summary of WAC changes.

Since DVHA is prohibited from revealing drug-specific net cost information, its Net Cost list ranks the drugs from 1 through 10 but reflects the gross amount paid for those drugs, together

with the percentage increase over one year. As DVHA observed with respect to its net cost list, "the gross cost to DHVA for each drug listed is provided as a benchmark. This may not align in order with the net cost of the drug to the State." Ex. A., p.5.

The drugs on DVHA's WAC and Net Cost lists did not overlap. For 2023, DVHA listed 8 brand and 2 generic drugs on its Net Cost list, while in 2022, the list was comprised of 2 brand and 8 generic drugs. DVHA's 2023 WAC list was composed of 3 brand and 7 generic drugs while only one generic drug was listed last year. Three drugs were common to the 2022 and 2023 WAC list; generic drugs Amphetamine/Dextroamphetamine (made by a different manufacturer) and Acetaminophren/Codeine, and brand drug Emflaza.

DVHA's Chart 3 provides a summary of the last three years of data on WAC price increases. In its narrative, DVHA made the following observations:

- There was a decrease from 2022 to 2023 in the percentage of drugs that reached the 15% threshold
- From 2022 to 2023, the percentage of generic drug NDCs[5] that exceeded the 15% threshold increased from 78% to 80%. The majority of drugs reported in Charts 1 and 2 were generic formulations
- As in previous years, 2023 generic drug prices consistently rose at a higher rate than brand drugs. In 2023, the average increase was 60% for generic NDCs and 28% for brand NDCs.

DVHA Report, p.5.

2. Health Insurers

BCBSVT selected nine generic drugs for inclusion on its current list (Ex. B) and MVP selected no generic drugs. MVP said that none of its generic drugs have increased 15% over the previous calendar year or alternatively, 50% or more over the past year (Ex. C).

The generic drug included on the BCBSVT list increased 16% which was the second lowest increase on its list and also represented its smallest net drug spend. BCBSVT's brand

[5] The NDC refers to the National Drug Code, a unique number assigned to each human drug in the U.S.

name drug increases ranged from 16% to 60%, lower than the 17% to 70% for its 2022 list. MVP's brand name drug increases ranged from 21.8% to 115% in 2023 as compared to 15.1% to 57.7% in 2022. None were common to MVP's 2022 list. Brand drug Creon appeared on both BCBSVT's and MVP's 2023 lists.

C. Specialty Drugs

The statute requires that DVHA and the Health Insurers identify any "specialty drugs" that appear on their lists. "Specialty drugs" are used to treat chronic, serious, or life-threatening conditions and are often far more costly than traditional drugs.[6]

One specialty drug appeared on each of DHVA's 2023 WAC and net increase lists, and both are generics. Seven of the 2023 BCBSVT and MVP 2023 drugs are specialty drugs. Two of the BCBSVT specialty drugs are brand and one is generic.

Specialty drugs represented 6 of the 10 brand drugs on MVP's 2022 list and eight of the ten drugs on BCBSVT's 2022 list (including both generic drugs). As has been the case for several years, Humira is on the 2023 BCBSVT 2023 list. Emflaza appeared on both the 2023 BCBSVT list and the DVHA WAC list.

Conclusion

Pharmaceutical drug pricing is extraordinarily complicated. Each party in the drug distribution chain (which includes manufacturers, wholesalers, pharmacy benefit managers,

[6] They can cost thousands of dollars per month and may exceed $100,000 per year. There are few or no low-cost generics. "Although there is no accepted definition of *specialty pharmaceuticals*, they generally are drugs and biologics (medicines derived from living cells cultured in a laboratory) that are complex to manufacture, can be difficult to administer, may require special patient monitoring, and sometimes have Food and Drug Administration (FDA)-mandated strategies to control and monitor their use." https://www.healthaffairs.org/do/10.1377/hpb20131125.510855/full/. They may require specialized and temperature-controlled shipping, storage and handling.

pharmacies, health/plans/payers) is governed by myriad requirements, and their interests vary. While it is clear there are ongoing sizeable drug price increases in both brand and generic drugs, the process of preparing this report has again demonstrated the challenges to providing the public with useable information about pharmaceutical pricing.

Respectfully Submitted,

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