



March 17, 2023

The Honorable Secretary of State, Chuck Gray
Secretary of State's Office
Herschler Building East,
122 W. 25th Street, Suites 100
Cheyenne, Wyoming 82002

RE: Line-Item Veto of SF0151/SEA No. 90 Wyoming Prescription Drug Transparency Act

Dear Secretary Gray,

I am greatly troubled by the rising cost of healthcare in our nation, particularly in Wyoming. Increases in prescription drug prices are a significant factor in the seemingly unchecked increases in healthcare costs to Wyomingites. Unfortunately, Wyoming remains one of the most expensive places in the country to receive healthcare. A few years ago, I established the Governor's Health Task Force with the purpose of understanding the cost drivers in Wyoming and to develop meaningful solutions to address the state's high costs and limited access. We have found that there are many issues that drive the cost of healthcare in Wyoming. One of particular note is our low patient volume resulting from our small and widely dispersed population. One fact is certain, however – addressing healthcare costs is complicated, especially in rural areas, and proposed solutions often result in cost shifting instead of actually reducing expenses or making the system whole and more affordable.

My concern for avoiding cost shifting brings me to Senate Enrolled Act No. 90 - Wyoming Prescription Drug Transparency Act (SEA0090). Let me begin by recognizing the importance of rural independent pharmacies. Wyoming prides itself in supporting small, locally-owned businesses but more importantly for many if not most of our communities small, attentive, locally-owned businesses are vital to the wellbeing of our communities and the people who live in them.

I have paid attention to a growing concern for losing our small town pharmacies for many years now. Corporate consolidation, vertical integration and increasing prices in the pharmaceutical market have all contributed to increased burdens placed on rural pharmacies. They are under greater stress than perhaps at any time before. As with many providers in the healthcare system, rural pharmacies are often left to manage operations with insufficient funds, subsidizing certain prescriptions and increasing compliance costs for accountability. These increased burdens concern me, and I understand that a primary, driving factor behind the drafting and consideration of SEA0090 was the desire to address these difficulties and provide some form of relief to rural independent pharmacies in Wyoming.

I commend the legislature for raising this complicated issue during the last two sessions, and I strongly support finding ways to protect the sustainability of rural independent pharmacies. That is why I am signing SEA0090. However, I fear that SEA0090 as drafted may do more harm than good, inadvertently shifting increased and burdensome pharmaceutical costs to consumers despite the good work done by all

involved to provide local relief. Amongst all of the competing information this session, all parties were unable to make a clear and convincing case on the “right” approach for controlling costs of pharmaceuticals for independent pharmacists and consumers. There was widespread disagreement on what effect this bill, as drafted, would have on the cost of healthcare to Wyoming consumers. During the interim, the Insurance Commissioner mediated discussions with all parties in hopes of developing legislation that would have positive impacts. Unfortunately, after months of collaborative work, these efforts were unsuccessful, and we seem to have arrived back where we started. In light of this, as well as the conflicting information on the cost to pharmaceutical reform related to Pharmacy Benefit Managers (PBMs), I am invoking my line item veto authority for portions of SEA0090 in an attempt to avoid unintended cost shifting to Wyoming consumers.

I realize that significant effort has gone into this legislation, and I acknowledge that it has resulted in some improvements to industry standards in the pharmacy pipeline; thus, I am still allowing parts of this bill to go into law.

Despite my line-item veto, I want to make clear that I support relief to rural independent pharmacies. As a result, I have also signed a Governor’s Directive for the Wyoming Department of Administration and Information (“A&I”) to negotiate payment of an increased amount of dispensing fee claims of up to \$10 per brand label claim and \$12 per generic brand claim to independent pharmacists participating in the Wyoming State Employees’ and Officials’ Group Insurance program. This will provide some financial relief to these pharmacists from one of the larger group insurance plans in Wyoming. I also implore other healthcare insurance providers and group plan administrators to follow suit. If we all work together in unison, we can make a difference in our communities and keep local businesses operational while ensuring quality access to vital healthcare services.

With my changes, SEA0090 is only the beginning of anticipated pharmaceutical reform. I hope that interested legislators, industry leaders and other stakeholders will continue to work together to keep healthcare local and that this discussion continues in earnest to achieve a thoughtful compromise on protecting the sustainability of Wyoming’s rural independent pharmacies while controlling costs to consumers. As always, the State must be conscious of the effects its policy decisions may have on Wyoming consumers to avoid shifting burdensome costs locally, which solves one problem at the expense of creating another.

Sincerely,



Mark Gordon
Governor

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cc: The Honorable Albert Sommers, Speaker of the House
The Honorable Ogden Driskill, President of the Senate
Chief Clerk, Wyoming House of Representatives
Chief Clerk, Wyoming Senate

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

(B) Enrollment or participation in a retail pharmacy network;

(C) The development or management of claims processing services or claims payment services related to participation in a retail pharmacy network;

(D) An application to apply for network access with the pharmacy benefit manager;

(E) Credentialing or re-credentialing; *Ma*

~~(F) Any change of ownership.~~ *Ma*

(iii) Retroactively deny or reduce reimbursement for a covered pharmacy service or claim after adjudication of the claim, unless:

(A) The original claim was fraudulent; or

(B) The denial or reduction is necessary to correct errors found in an audit, provided that the audit was conducted in compliance with W.S. 26-52-103.

Ma ~~(iv) Restrict a person's choice of network providers for prescription drugs, except for specialty medications as defined by W.S. 26-52-102(a)(xi);~~

Ma ~~(v) Conduct spread pricing;~~

Ma ~~(vi) Retain funds paid by a pharmaceutical manufacturer to a pharmacy benefits manager as a result of negotiations of a reduced price for a pharmaceutical between a pharmacy benefits manager and a manufacturer, in relation to a contract between a pharmacy benefits manager~~

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

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~~and an insurer related to its insured prescription drug benefits. Funds retained under this paragraph shall be remitted to and retained by the insurer and shall be used by the insurer to lower premiums for covered persons under the insurer's health benefits plan or to allow for remittance directly to the covered person at the point of sale to reduce the covered person's out-of-pocket costs;~~

(vii) Prohibit a pharmacy, pharmacy services administrative organization, contracting agent or agent of a pharmacy from sharing, upon request, copies of pharmacy benefit manager contracts with ~~requesting pharmacies or~~ the department of insurance; *MS*

(viii) Prohibit, restrict or limit disclosure of information to the insurance commissioner, law enforcement or other state or federal government officials who are investigating or examining a complaint or conducting a review of the pharmacy benefit manager's compliance with the requirements of this chapter;

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~~(ix) Reimburse a pharmacy for pharmacy services in an amount less than the amount that the pharmacy benefit manager reimburses a pharmacy benefit manager owned or pharmacy benefit manager affiliated pharmacy for providing the same pharmacy services. The reimbursement amount paid to the pharmacy shall be equal to the reimbursement amount paid to a pharmacy benefit manager owned or pharmacy benefit manager affiliated pharmacy.~~

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~~(b) A person's choice of network provider shall include a retail pharmacy. An insurer or pharmacy benefit manager shall not require or incentivize using any discounts in cost sharing or a reduction in copay or the number of copays to individuals to receive prescription~~

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

Ma ~~drugs from an individual's choice of in network pharmacy, except for specialty medications as defined by W.S. 26-52-102(a)(xi).~~

(c) Insurers, pharmacies and pharmacy benefit managers shall adhere to all state laws and rules when mailing or shipping prescription drugs into the state.

26-52-106. Alternate reimbursement methodologies.

Ma (a) All contracts between a pharmacy benefits manager and a pharmacy services administrative organization, or its contracted pharmacies, and all contracts directly between a pharmacy benefits manager and a pharmacy shall include a process to investigate and resolve disputes ~~and allow appeals regarding brand and multiple source generic drug pricing, including if applicable brand effective rates, for pharmacy reimbursement.~~

Ma (b) ~~Appeals authorized under this section shall comply with the procedures specified in W.S. 26-52-104.~~

26-52-107. Certain claims excluded.

W.S. 26-52-104 through 26-52-106 shall apply to all health benefit plan issuers and pharmacy benefit managers except those claims associated with the Wyoming Medicaid fee-for-service program, the Wyoming workers compensation division or those claims otherwise prohibited by federal law.

Section 2. W.S. 26-52-102(a) (vii) and by creating new paragraphs (viii) through (xii) and 26-52-104(a)(i), (d)(ii), (e), (f) and by creating new subsections (k) and (m) are amended to read:

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

26-52-102. Definitions.

(a) As used in this article:

(vii) "Pharmacy benefit manager" means an entity that contracts with a pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager on behalf of an insurer or third party administrator to administer or manage prescription drug benefits;—

Ma ~~(viii) "Pharmacy acquisition cost" means the amount a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the pharmacy's billing invoice;—~~

(ix) "Pharmacy services" means any product, good or service, or any combination of products, goods or services, provided as part of the practice of pharmacy;

(x) "Pharmacy services administrative organization" means an organization that evaluates and executes pharmacy benefit manager contracts on behalf of pharmacies and provides administrative, clerical, audit and data analytics support services;

Ma ~~(xi) "Specialty medication" means a prescription drug that is typically high cost and that:~~

~~(A) Is prescribed for a person with a:~~ *Ma*

Ma ~~(I) Chronic, complex or life-threatening condition; or~~

~~(II) Rare medical condition.~~ *Ma*

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

~~(B) Has limited or exclusive distribution;~~

~~or~~

~~(C) Requires:~~

~~(I) Specialized product handling or
administration by the dispensing pharmacy; or~~

~~(II) Specialized clinical care,
including frequent dosing adjustments, intensive clinical
monitoring or expanded services for patients.~~

~~(xii) "Spread pricing" means a prescription drug
pricing model utilized by a pharmacy benefit manager where
the pharmacy benefit manager charges a health benefit plan
a contracted price for prescription drugs that differs from
the amount the pharmacy benefit manager directly or
indirectly pays the pharmacy or pharmacist for providing
prescription drugs.~~

**26-52-104. Maximum allowable cost; offering
information and alternatives.**

(a) To place a drug on a maximum allowable cost list,
a pharmacy benefit manager shall ensure that the drug is:

(i) If the drug is a generically equivalent
drug, rated "A" or "B" in the most recent version of the
United States Food and Drug Administration's Approved Drug
Products with Therapeutic Equivalence Evaluations (Orange
Book), or rated "NR" or "NA," or has a similar rating, by a
nationally recognized reference;

(d) A pharmacy benefit manager shall: