Information from the National Academy for State Health Policy Regarding Prescription Drug Affordability Boards and SB 404

Chair Patterson, Vice-Chair Hayden and members of the Senate Health Committee,

My name is Drew Gattine and I am a Senior Policy Consultant at the National Academy for State Health Policy (NASHP).

NASHP is a non-partisan forum of state policy makers that works to develop and promote innovative health care policy solutions at the state level. We approach our work by engaging and convening state policy makers, including legislators, to solve problems. We conduct policy analysis and research and we provide technical assistance to states.

NASHP created its Center for Drug Pricing in 2017 to focus attention on steps that states can take to tackle the spiraling costs of prescription drugs and the impact they have on consumers, the overall cost of health care and state budgets. The Center for Drug Pricing develops model legislation and provides technical assistance and support to legislators and executive branch leaders who wish to move them forward. When these bills pass, NASHP continues to support states as they are implemented. As an example, NASHP convenes a regular meeting of the six states (including Oregon) that have created Prescription Drug Affordability Boards ("PDABs") so that they can share technical expertise and other knowledge and experience.

In 2017, NASHP released its first model bill to create a state based PDAB. PDABs can be used to limit – and even lower – prescription drug costs by analyzing the affordability of high cost drugs and imposing upper payment limits (UPLs), a ceiling on the amount that a payer can reimburse for the purchase of a drug the PDAB determines to be unaffordable. Since NASHP released its initial model, six states (Colorado, Maryland, Maine, New Hampshire, Oregon and Washington) have enacted PDABs. Maryland was the first in the nation to pass a PDAB in 2019 and has a process to phase in setting upper payment limits, starting with public purchasers. In 2021, Colorado created a PDAB with broad authority to set upper payment limits across all payers within the state. Oregon also created its PDAB in 2020. In 2022, the legislature in Washington State created a PDAB that also has authority to set upper payment limits.

In 2022 NASHP developed a revised PDAB model that reflects lessons learned, best practices, and shared experience. The model also incorporates experiences from states that have implemented comprehensive drug price transparency laws. NASHP has also published a legal analysis specific to PDABs which is available on our website, along with a Q&A and Blog.

This legislative session PDABs have been introduced in New Jersey, Minnesota, Virginia, New Mexico, and Rhode Island. Virginia's PDAB (which has the ability to set upper payment limits) received a strong bi-partisan vote in the state senate. NASHP expects that other states will have an active discussion this year and that additional PDABs will be proposed.

Although there are differences among the various enacted PDABs, the Boards with the greatest potential to directly impact costs have been given the statutory authority to establish UPLs. UPLs are a maximum rate applicable to payors and purchasers. UPLs are not price control – manufacturers are still free to set the wholesale price – but they do create a limit above which purchasers are not allowed to pay. SB 404 if enacted (as amended) would give Oregon's PDAB this important tool. Otherwise Oregon's PDAB legislation has many similarities to legislation in Colorado, Maryland and Washington.

States like Oregon that have already made significant investments in data, analytical capabilities and transparency are well positioned to take the next step in terms of performing affordability analysis and setting UPLs.

NASHP would be happy to work with the Committee as it moves forward with its consideration of this bill and stands ready to offer any technical or policy assistance that the Committee needs.

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