Causes and Contributors Working Group

AG Lowering Pharmaceutical Prices Task Force

May 8, 2019

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- No single cause
- Layers with drug prices
  - New drug – get FDA approval, company sets price, brand name, patented.
- Drug companies have been given a legislative monopoly, not a natural monopoly
  - We've created a monopoly system granted by the government
  - Allows companies to set prices at whatever price they choose
  - Therefore, no real competition, the market doesn't really set the price because there's no real market for drugs
- Monopolies are backed up by patents
  - Patent thicket – a drug may have 30 patents that are staggered meaning patents could be in place for 15 – 35 years
  - Pile on patents i.e. if you do a trial to see if the drug is effective on pediatric patients, then they're given a extension on the patent
- Orphan drug
  - Drug companies create exclusive groups just to get an extension on the patent
- Patents
  - Arbitrary number in regards to length of time tied to profit (which is the norm) but drug patents are treated differently
  - Once the patent is about to expire, drug company will go from a tablet to a capsule form and the FDA will give them a new patent
  - Pay to play – brand company goes to generic company and pays them more to stay off the market which blocks other generics from coming onto the market
  - Must only prove you're better than a placebo to get FDA approval
  - Generics must get the brand formula in order to compare the two before they can bring the generic to market
  - *API – Active Pharmaceutical Ingredient
- REEMs program
  - High risk drugs, high risk protections; registry of patients; meant as a safety protection but drug companies use it to prevent generics

- New CMS regulation – direct to consumer drug ads on TV must now include the list price however, it will be on there for about 4 seconds of a 75 second ad and will state the list price but also say the actual cost is likely much less depending on insurance or program the patient is part of.
    - Drug companies target their ads on a particular drug that isn't on the current formulary of the most popular insurance plan in the area so patients ask their doctors and insurance companies to add that drug to the formulary – this is market behaviors but no real market exists
- State can be a prudent purchaser per the commerce clause
- Set price levels to trigger a review process to hold drug companies accountable but need a hammer for compliance
    - Possible hammer – if drug company doesn't provide appropriate accountability pricing then the drug won't be put on the state program's drug formulary
- We need rebate data for the state programs – this data has not, to our knowledge, ever been reported to either the legislature or the public.
    - Who can access it and how?
- Clearer causes of action in law are needed to help the AGs office
    - Implicit rationing
    - Identify high price increases in drugs
        - 1st – generic
        - 2nd – brand name
        - 3rd – brand name at time of introduction
- Currently we do not pool all the state programs in relation to drug formularies/purchases:
    - State employee health plan
    - Mental health facilities
    - Prisons
        - How much do we pay per year?
        - Get a sampling of the types of drugs
        - What percent is directly paid for by the state?
        - State as a prudent purchaser
    - Bring in MCAP to do a presentation
    - PMAP has a single formulary for all patients served in the program
- Medicaid rules
    - State waivers beyond federal regulation
- Outlaw co-pay coupons
    - Illegal to use with Medicare and Medicaid because they're actually kick-backs, do the same for other state programs and broaden to the commercial market.
    - Coupons actually raise the actuarial value of the drug benefit, not decrease it
- Root causes:

    - Drugs are not like a regular economic market – this is literally about life or death
    - We grant the monopolies that now exist
    - Patent thicket
    - Lack of transparency in pricing
    - Insurance companies and Prescription Benefit Managers (PBMs) role particularly in influencing physicians
    - Patient:
        - What can they do to make a wise decision when purchasing necessary medication?
        - What tools can we give them?
    - Rebates, coupons, assistance programs, physician office samples
- Develop a flow chart starting with the patient needing medication i.e. patient goes to pharmacy and build from there.

Suggestions for agendas going forward:

- Patent law and monopolies
- Generic competition
- Prices – what they – secrecy and need for transparency
- Can we look at drug pricing by what people can actually afford?
- Games the industry plays – coupons, rebates, assistance programs, etc.
- Penalties for behaviors that drive up prices

Future meeting dates and time (location TBD):

- May 29 – 5:00 – 7:00
- June 26 – 5:00 – 7:00