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State of Louisiana

Louisiana Department of Health
Bureau of Health Services Financing

February 2, 2018

The Honorable Frank A. Hoffmann
Chairman, House Health & Welfare Committee
Louisiana State House of Representatives
P. O. Box 94062, Capitol Station
Baton Rouge, LA 70804-9062

Re: House Resolution No. 181 of the 2017 Regular Session

Dear Representative Hoffmann:

In response to House Resolution No. 181 of the 2017 Regular Session, the Louisiana Department of Health (LDH) submits the enclosed information. The resolution urges and requests LDH to study the desirability and feasibility of adopting a state policy to provide for the review of prescription drug prices and rebates in the medical assistance program, commonly known as Medicaid.

LDH, in conducting the study requested by this Resolution, shall specifically determine the desirability and feasibility of implementing a policy similar to the recently enacted policies of the states of New York, Texas, and Ohio to encourage drug manufacturers to provide supplemental Medicaid rebates.

State Medicaid programs are eligible to participate in federal and supplemental rebate programs to offset the cost of purchasing prescription drugs. Louisiana currently participates in both programs as outlined below.

Federal Medicaid Rebates
Authorized under Section 1927 of the Social Security Act, the federal Medicaid Drug Rebate Program (MDRP) was created in 1990 to ensure that Medicaid programs receive the lowest or "best price" for drugs sold by manufacturers. In exchange for entering into a national rebate agreement with the Secretary of Department of Health and Human Services (DHHS), manufacturers are assured Medicaid coverage of their drugs, subject to reasonable limits that states may place through prior authorization or other utilization management tools. Rebate amounts are calculated based on statutory formulas for specific drug types.

Louisiana currently claims rebates for drugs covered under both Fee-For-Service (FFS) and managed care delivery systems. In addition, the state is required to track and submit rebates for physician-administered drugs that may be paid as medical claims outside of state outpatient pharmacy claims systems.

State Supplemental Rebates
In addition to the federal rebate program, states can enter into supplemental pharmacy rebate agreements directly with manufacturers. This can be done to place a drug on the state's Preferred Drug List (PDL) based on review of a drug's effectiveness and costs as compared to therapeutically equivalent drugs, and/or application of clinical coverage criteria.

Manufacturers negotiate these rebates in order to obtain preferred status and potentially bypass prior authorization requirements before dispensing. Supplemental rebates are generally established based on a guaranteed net price for a drug, and calculated in proportion to the federal rebate amount. States can negotiate rebates either as a single state and/or through multi-state purchasing pools.

LDH currently has a preferred drug list with a prior authorization process and a Supplemental Drug Rebate program in its FFS program. Act 395 of the 2001 Regular Session of the Louisiana Legislature amended R.S.46:153.3 (B)(2)(a) and authorized the then Department of Health and Hospitals, now named Louisiana Department of Health ("the Department"), to establish a drug formulary utilizing a prior approval process or any other process or combination of processes that prove to be cost-effective in the medical assistance program. The Act also created a Pharmaceutical and Therapeutics (P&T) Committee consisting of 21 members appointed by the Governor.

Unlike New York which determines supplemental rebates in Drug Utilization Review (DUR), Louisiana utilizes the P&T process to negotiate supplemental rebates in addition to federal rebates in the FFS program. The Louisiana P&T Committee reviews clinical parameters and outcomes in addition to the cost effectiveness of a drug in order to determine preferred or non-preferred status. The Louisiana DUR Board, on the other hand, looks for appropriateness and medical necessity of drug therapy and prescription utilization.

Unlike FFS, supplemental rebates are not currently available to the state for pharmacy benefits managed by the state's contracted managed care organizations (MCOs) as they negotiate directly between the MCOs' Pharmacy Benefit Managers and manufacturers for discounts on the individual MCO PDLs.

Other States
In researching other states, it has been determined the states have various policy options to manage prescription expenditures including:

- Establishing preferred drug/prior authorization requirements;
- Utilization management protocols; and
- Managed care coverage.

Details on recent relevant drug pricing policy changes in New York, Texas and Ohio as requested by HR 181, in addition to several other states, are listed in Table 1.

Although the states have taken varied approaches, Federal laws require drug manufacturers nationwide to give Medicaid programs their "best price" — equal to or less than what it is paid by private insurers. Most states, including New York, already seek supplemental rebates, often in exchange for priority placement on lists of which drugs can be dispensed.

LDH is exploring options such as a single PDL for pharmacy benefits under both FFS and managed care. If the state becomes the negotiating party with manufacturers for rebates under a single PDL applicable to both FFS and managed care, the state will be able to maximize supplemental rebates.

Please contact Melwyn Wendt, Melwyn.Wendt@LA.GOV Pharmacy Director at (225) 342-9479 with any questions or comments you may have regarding this report.

Sincerely,

Jen Steele
Medicaid Director

Enclosure [1]

cc: Representative Kirk Talbot
David R. Poynter, Legislative Research Library

Table 1. State Legislation/Policy		
State	**Multi-State Drug Purchasing Pool**	**Legislation**
Maryland	The Optimal PDL Solution (TOP$)	Will give the State Attorney General and Circuit Courts authority to penalize the makers of essential generic and essential off-patent medications for excessive price increases.
Montana	Sovereign States Drug Consortium (SSDC)	2017 legislation directs the State Legislative Council to establish an interagency committee to study drug pricing and state drug spending trends, and make recommendations about drug spending by September 2018.
New Mexico		Legislation would have created an interagency group of state agencies to explore ways of reducing the cost of prescription drugs on state programs. The bill provided direction for what the group should explore but did not require the individual agencies to adopt any of the recommendations. Failed Governor's signature.
New York	National Medicaid Pooling Initiative (NMPI)	Legislation passed as part of the 2017 state budget imposes a Medicaid prescription drug spending growth cap. When it appears the Medicaid spending cap will be breached, the Commissioner of Health may select a drug for referral to the state Drug Utilization Review Board (DURB). The DURB is given new authority to assess product value and recommend back to the Commissioner a target Medicaid supplemental rebate amount which would be in addition to the federal Medicaid minimum rebate amount. If the Commissioner cannot negotiate a rebate for Medicaid that is at least 75 percent of the recommended target amount, the Commissioner is authorized to require Medicaid prior authorization and prescriber justification.
Ohio	SSDC	The P&T Committee is responsible for developing and maintaining medications and related products listed on the Ohio Department of Medicaid's (ODM) PDL pursuant to the Ohio Revised Code §5164.7510. The Ohio Drug Utilization Review program is a provider-oriented, educational outreach program designed to alert physicians and pharmacists to inappropriate or medically unnecessary care. As part of the 2002 state's budget bill, (§5111.082) the Medicaid agency may "establish and implement a supplemental drug rebate program" and make drugs of manufacturers not making such payments subject to prior authorization. Specifies that, at the Medicaid Director's discretion, a supplemental rebate may include cash payments or services that will produce savings. Examples may include disease management, drug product donations, drug utilization control, beneficiary counseling, and fraud and abuse initiatives. Supplemental rebates shall not be required for drugs used to treat mental illness or HIV/AIDS.
Texas	Single PDL	Created the Interagency Council on Pharmaceuticals Bulk Purchasing. Would create a system of bulk purchasing of

		prescription drugs by state agencies, including Dept. of Health, Mental Health, state employees, retirees, teachers, prison system and any other agency that purchases pharmaceuticals. The Medicaid program initiated the "Texas Medication Algorithm Project," which provides that the state "shall negotiate" with manufacturers and labelers to obtain supplemental rebates for prescription drugs provided under Medicaid CHIP, and any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals. Allows for contract with a benefits manager (in §2.11). Establishes a preferred drug list for Medicaid, CHIP, and any other state program. The PDL "may contain only drugs provided by a manufacturer or labeler that reaches an agreement with the commission on supplemental rebates," with some exceptions. (§2.13)
Utah	SSDC	Directs the Department of Health to study the feasibility of a prescription drug importation program that could be certified by the Secretary of the U.S. Department of Health and Human Services.
Vermont	SSDC	In 2016, led the way with a price transparency law that requires the state to identify up to 15 drugs that account for significant state spending and which have seen price increases of either 50 percent over five years or 15 percent over one year. Manufacturers of those products have to submit price increase justifications to the Attorney General and that information will be made public. 2017 legislation built on Vermont's first initiative to further to address drug pricing.