

CHAIN PHARMACY ASSOCIATION OF NEW YORK STATE

11

1 Commerce Plaza, Suite 402
Albany, NY 12210
Telephone: (518) 465-7330
Facsimile: (518) 465-0273

Duane Reade, Inc.

Testimony Before:

Hannaford Brothers Co.

Senate Finance Committee

Kinney Drugs, Inc.

Assembly Ways & Means Committee

Price Chopper Supermarkets

**Tuesday, February 8, 2012
10:00 a.m.**

Rite Aid Corporation

Hearing Room B

Stop & Shop/ Ahold

**Legislative Office Building
Albany, NY**

Target

Presented By:

Tops Markets LLC

Michael Duteau

Town Total Health

Chain Pharmacy Association of New York State

Wakefern

Walgreens

Walmart

Wegmans

Chairmen DeFrancisco, Hannon, Farrell, Gottfried and other Members of the panel, my name is Michael Duteau. I am Vice President of Pharmacy Operations and Government Affairs for Kinney Drugs and Vice Chair of the New York State Board of Pharmacy. I am testifying today on behalf of the Chain Pharmacy Association of New York State. We greatly appreciate the opportunity to testify regarding the Governor's Proposed FY 2012-13 State Budget as it relates to community pharmacy.

On behalf of our thirteen member companies, we would first like to express our appreciation for the past support and leadership of the Senate and Assembly in restoring a number of proposed cuts to pharmacy reimbursement and other actions in support of community pharmacy. Below we have provided background on the pharmacy industry in New York State including a summary of the history of cuts to community pharmacy enacted over the last decade. Further, we provide our perspective on the 2012-13 Executive Budget followed by our recommendations to expand patient access to necessary health care services while also reducing Medicaid costs. We thank you in advance for your consideration of our comments in this regard.

Introduction/Value of Pharmacy

There are approximately 4,472 community pharmacies, chain and independent, across New York State which collectively employ over 132,280 full and part-time workers including almost 10,719 pharmacists. Chain pharmacies specifically employ 114,927 of the employees in New York and contribute \$1.5 billion of the \$1.28 billion in total taxes paid by pharmacies to New York State annually. New York's 2,282 chain pharmacies play a vital role across the state providing high quality pharmacy care to our residents. The services provided by pharmacies help to keep people healthy and in the community, preventing other escalating healthcare costs such as hospitalizations and emergency room and doctor's visits.

Medications are particularly important to the management of chronic diseases that require long-term or lifelong therapy. Poor medication adherence costs the nation approximately \$290 billion annually – 13% of total healthcare expenditures – and results in avoidable and costly health complications, worsening of disease progression, increased emergency room visits and hospital stays. This inadequate medication adherence rate is associated with about \$47 billion annually for drug-related hospitalizations, and estimated 40 percent of nursing home admissions.¹ Community pharmacists are uniquely qualified and positioned to help reduce the problem of poor medication adherence and are skilled to work with patients to manage their medications and chronic conditions. Through well-established relationships with the patient, pharmacists have gained the trust of their patients and have proven to be a reliable source of information to the patient regarding their healthcare needs.

Through services like medication therapy management and administration of immunizations, community pharmacists have the ability provide quality care that is convenient and easily accessible in virtually every community. Community pharmacists are medication experts with the ability to identify patient-specific medication-related issues and communicate those issues to the patient and their provider. Pharmacists have the ability to educate the patient with the necessary information to improve patient compliance, outcomes, overall quality of care, and reduce overall healthcare costs associated with far more costly medical interventions.

¹ New England Healthcare Institute, 2009.

History on Pharmacy Reimbursement

New York State has cut pharmacy reimbursement under Medicaid, EPIC and other public programs thirteen times since 1994. These cuts included decreases in pharmacy reimbursement paid to pharmacies for brand and generic drugs, implementation of a state maximum allowable cost program, removal of dispensing fees for over-the-counter products, and cuts in reimbursement for prescriptions filled under the Workers' Compensation program. Most recently in 2011, pharmacy reimbursement was further reduced under Medicaid with a reduction on both the product cost side (to AWP-17%) and dispensing fee (through a \$1 decrease for every generic dispensed). Since 1994, these cuts have resulted in a total loss of almost \$10 billion to community pharmacy.

Chain pharmacy recognizes the tremendous budgetary challenges that the state of New York is facing and the subsequent need to control Medicaid program costs to help balance the state budget. However, cutting pharmacy reimbursement is not an appropriate way to achieve desired savings, nor will it serve to control program costs in the long term. We are very pleased that the FY 2012-13 Executive Budget does not propose any further reimbursement cuts to pharmacy. However, we would note that pharmacies continue to face serious losses under Medicaid and Family Health Plus as a result of our inability to collect copayments at the point of sale. We estimate that this results in a loss of over \$37 million to community pharmacies annually. We thank the Senate and Assembly for introducing legislation to address this matter. We are grateful to the Senate for your passage of this important measure last session.

FY 2012-13 Executive Budget

Specific to the FY 2012-13 Executive Budget, our primary focus is the proposal to require chain pharmacies to provide language interpretations. Specifically, the Language Interpretation proposal included in the 2012-13 Executive Budget would require chain pharmacies (defined as 5 or more) and mail order pharmacies to provide free, competent and oral interpretation services to patients that are Limited English Proficient (LEP) including oral interpretation of prescription labels and other written materials. Our member companies believe that it is critical that all patients have access to high quality pharmacy services. However, we have a number of concerns with this proposal as written, which we have summarized below followed by our recommendation in each area.

- I. Oral Interpretation Services for Limited English Proficient (LEP) Individuals:** This proposal primarily targets smaller, more regional chains and grocers on Long Island and in Upstate New York since large chains and chain pharmacies throughout the city of New York are already providing LEP interpretation services voluntarily statewide or pursuant to a local ordinance in New York City.

Recommendation: Given this, we are unaware of evidence that there is a documented need for these services beyond what is already being provided by chain pharmacies and would recommend further study prior to mandating it. Further we are **strongly opposed to any expansion of what would be required under this proposal including written translation of prescription labels and other pharmaceutical materials which based on feedback from members who have looked into doing so, is very difficult if not impossible to comply with given technology and other limitations.** In addition, there are serious safety

issues to consider with regard to ensuring the accuracy of translated materials. One study published in April 2010 found an error rate of 50% in prescription labels translated into Spanish by pharmacies in the Bronx.

- II. Remove Cause of Action Against Pharmacies:** This proposal permits a cause of action against a pharmacy by aggrieved individuals for failure to receive required services. We believe that this is outrageous. This would create a special right to sue a pharmacy for a particular population (those who are LEP) related to the counseling and other services provided by a pharmacy. Currently, all individuals who feel that they were not counseled or were mistreated may file a complaint with the State Office of Professional Discipline. The Office then investigates the complaint and if found in violation, the pharmacist and/or pharmacy may face fines, revocation of license or a number of other serious actions.

Recommendation: The current law is sufficient in this regard, treating all patients who may be aggrieved in the same manner. If the State were to require oral interpretation services in pharmacies, **we respectfully request that this right to a cause of action be removed from the language.**

- III. Create a Uniform State Standard:** The Executive Budget would allow localities to impose additional or stricter requirements. In addition to the operational concerns that we have with this language, such a provision could result in a patchwork of different language, counseling, labeling and other prescription/ pharmacy requirements.

Recommendation: If the State were to require oral interpretation services in pharmacies, we believe that it is critical that there be one statewide standard for interpretation services in pharmacy practice to ensure the safety of the public. **To that end, the language permitting localities to impose additional requirements should be removed and language should be added to preempt local action, providing one State standard.**

- IV. Provide Liability Protection Related to Third Party Contractors:** The Executive Budget permits pharmacies to use pharmacy staff or third party contractors to meet the oral interpretation requirements in the bill. Given the number of languages for which interpretation could be required, pharmacies would likely have no other choice but to use third party contractors. However there are concerns in doing so related to how to ensure the accuracy of interpreted messages and difficulties in terms of the pharmacist trying to answer patient questions. Clearly, critical information could get lost in the translation.

Recommendation: If the State were to require oral interpretation services in pharmacies, we strongly urge that the State provide protections to pharmacies by **adding language which states that pharmacies are not liable for any issues related to the accuracy of the**

interpretation services provided by third party contractors if pharmacies are mandated to provide oral, interpretation services.

- V. Require Interpretation Services by All Health Care Providers:** The Executive Budget only applies to chain pharmacies (defined as 5 or more) and mail order pharmacies. If there is a strong need in the State for these types of services for those who are limited English speaking, we fail to understand why it has such a limited reach.

Recommendation: To ensure accuracy, consistency and patient safety, **we believe the proposal should apply to all health care providers serving patients who are LEP if enacted.**

Recommendations for Cost Containment Strategies

The Chain Pharmacy Association is committed to continuing to work with the State to identify and implement better alternatives for controlling pharmacy program costs than general rate reductions. Implementation of cost savings initiatives such as expansion of the State's pharmacist immunizer law, increasing generic utilization, implementation of medication therapy management, health homes for patients with chronic conditions which includes pharmacists, and implementation of a cost avoidance program to limit state expenditures on prescriptions where beneficiaries have other third party prescription coverage could increase patient medication adherence, decrease overall healthcare costs as well as generate additional savings for the state. As a result, these cost savings initiatives could also minimize the effect these budget constraints could have on pharmacies and the quality of service provided to patients. Below is a description of each of the abovementioned cost savings initiatives.

Expansion of Pharmacist-Administered Vaccines: Pharmacists are valuable members of the healthcare team who have an important role to play in providing immunization services. Highly educated to provide patient care services and easily accessible in all communities, pharmacists are well-suited to help states increase their vaccination rates and reduce the incidence of vaccine preventable diseases. Notably, vaccines help prevent 14 million cases of disease and 33,000 deaths yearly.² In recent years, pharmacists have been instrumental in increasing the vaccination rate in the United States.³ Unfortunately, pharmacists are still limited in their ability to further increase vaccination rates by state laws and rules that restrict the age of patients who pharmacists can vaccinate and/or the portfolio of vaccines that pharmacists can offer. Pharmacists should be allowed to practice to the maximum of their capabilities, partnering with other healthcare providers in coordinated efforts to decrease the number of under-vaccinated Americans.

We strongly support allowing pharmacists to provide immunizations for all vaccines recommended by the Centers for Disease Control and Prevention (CDC) for the adult population. In addition, the current law to allow pharmacists to give immunizations should be made permanent and the requirement that the standing order given to a pharmacist must be from a physician in the same

² Department of Health and Human Services, Fiscal Year 2008. Centers for Disease Control and Prevention. *Justification of Estimates for Appropriation Committees.*

³ Data from the CDC shows that over the years, states in which laws were enacted to expand pharmacists' authority to provide vaccinations to adults have seen an increase in their overall adult vaccination rates. NACDS Economic Department.

county should be lifted. Immunizations are the best defense against morbidity and mortality for diseases for which vaccines are available. In New York, there are 7,200 pharmacists certified to administer immunizations. Pharmacists delivered over 800,000 shots in 2010 in New York State and according to the CDC; we saw an overall increase in adult immunization rates of 2.8% that year. We conservatively estimate that by expanding the current law in terms of the immunizations that pharmacists can provide, the State can expect pharmacists to deliver at least 1 million vaccines annually. Based on review of national studies, for every vaccine administered, the state can save \$70 in prevented healthcare costs⁴. In 2012, this would result in \$70 million saved through the expansion of pharmacist-administered vaccines.

Increased Generic Utilization Rates: As of 2010, New York had a 64.5 percent generic utilization rate and ranked 48th among all state Medicaid generic utilization rates for that year. Despite being dispensed 64.5 percent of the time, generics constituted only about 13.9 percent of program spending on prescriptions. In 2010, every one percent increase in the New York Medicaid Program's generic utilization rate saved about \$73 million. Raising New York Medicaid's 64.5 percent generic dispensing rate by 10.8 percentage points, to neighboring Pennsylvania's 75.3 percent rate, would yield \$789 million annually. It remains crucial to the State's continuing cost-saving efforts that generics are preferred, not only in statute, but also in the minds of those who prescribe and dispense prescription drugs. An increase in New York's generic utilization rate could definitely yield additional Medicaid program savings.

Medication Therapy Management: Over the last five years Medicaid medication therapy management (MTM) programs and pharmacy-assisted disease management programs have been building a notable track record for achieving significant savings. Whether designated as MTM or disease management, these programs typically focus interventions on patients with complex chronic medical conditions, especially those with a high risk of complications and co-morbidities, such as diabetes, kidney disease, asthma and other chronic pulmonary diseases, or chronic heart disease. Both Missouri and Minnesota have implemented MTM programs and have seen substantial savings in overall healthcare costs. At the end of the first year of program operation, Missouri Medicaid officials projected annualized savings for the program of \$2.4 million.⁵ Similarly in Minnesota, in 2006-2007, the program generated a total savings of approximately \$2.11 million.

It is difficult to calculate how many New York Medicaid beneficiaries would qualify for inclusion in the target population for a medication therapy management program designed for beneficiaries with multiple chronic conditions. However, assuming participation in the New York program parallel to the 0.13 percent participation in the Missouri Program, using New York's approximately 1.5 million patients remaining in Fee for Service, and applying the \$2,000 per participating patient savings from the Missouri Medicaid program yields a potential 1,950 participants and potential savings in New York from this approach of \$3.9 million.

State Option to Provide Health Homes for Medicaid Enrollees with Chronic Conditions: Beginning January 1, 2011 the Secretary of Health and Human Services began awarding planning grants to states who are interested in developing a health home as a part of their Medicaid program. In

⁴ "An Employee Influenza Immunization Initiative in a Large University Managed Care Setting." *Journal of Managed Care Pharmacy*. Vol. 7, No. 3. May/June 2001.

⁵ 2006 *Disease Management Directory & Guidebook*, "Pharmacist-Led DM Delivers Clinical, Financial Dividends," pp. 7-10, and *Missouri Medicaid DM Program Shows Positive First-Year Outcomes*, pp. 583-84.

addition to planning grants, those states that are approved for implementation of the health home will receive 90% federal medical assistance percentage (FMAP) for health home services provided during the first two years that the State Medicaid Plan amendment is in effect. We know that New York State has started the process of providing Health Homes for Medicaid enrollees and we believe that pharmacists should be included in this initiative. Through coordinated efforts with other healthcare providers, community pharmacists play an important role in ensuring patients take their medications as prescribed. This will improve health outcomes and reduce the use of more costly medical interventions such as hospitalizations and emergency room visits.

Prescription Drug Cost Avoidance: Problems states face in ensuring that Medicaid is the payer of last resort fall into two categories: problems verifying whether beneficiaries have private health coverage and problems collecting payments or “pay-and-chase” when such coverage exists. On the basis of self-reported health coverage information from the Census Bureau’s annual Current Population Survey (CPS) covering the 2002 through 2004 time period, an average of 13% of respondents who reported having Medicaid coverage for the entire year also reported having private health coverage at some time during the same year. In addition, the average amount of costs recovered through pay and chase programs is 17%, which does not include the cost to administer the program. By implementing a cost avoidance program which utilizes access to real-time eligibility information, the costs of administering a pay-and-chase program is mitigated and the cash flow remains with state Medicaid agencies. The prospective cost avoidance savings identified would be in addition to states’ current pay-and-chase programmatic efforts. Over time, prescription cost avoidance will mitigate the need for existing retrospective pay and chase models used for pharmacy services.

Conclusion

We would again like to thank you for your past support of community pharmacies which has helped to ensure patient access to high quality and preventative pharmacy services throughout New York State. **We appreciate the opportunity to submit our testimony today and look forward to continuing to work with the Legislature to ensure access to prescription drugs and pharmacy services for all New Yorkers.**