2017-2018 High Cost Drug Budget Provisions

HPA Strongly Supports the Executive Proposal

Pharmacy costs are the fastest growing costs in the Medicaid program, increasing from $4.3 billion to $6.7 billion in five years, and now exceed in-patient hospitalization costs. The Governor's budget proposes to authorize the Commissioner of Health to cap prescription drug prices and capture excess pricing profits in both Medicaid and commercial markets. Current law that allows the state to negotiate additional rebates for high priced Hepatitis-C and HIV drugs provides a precedent for this action. The proposal expands on this approach by permitting the Drug Utilization and Review Board (DURB) to target pharmacy price gouging to protect consumers and the state budget. The total pharmacy savings under the Governor's program is $110 million.

Assembly One House Budget Proposal

The Assembly's high cost drug proposal closely follows the Executive's proposal, with one significant variation:

- The Assembly adds language to the Governor's proposal requiring that if the DURB recommends a benchmark price, all supporting documentation be submitted to the Attorney General for review. The Attorney General would determine if the DURB recommendation shall be approved, denied or referred back to the DURB.

HPA opposes this amendment. *The Attorney General's office is not equipped, nor is it the appropriate oversight agency, to determine if the DURB's findings should be approved or denied. As structured in the Governor's proposal, the DURB and Commissioner of Health have the knowledge and experience necessary to determine excessive drug prices, whereas the Attorney General's office should be used to enforce compliance with the DURB recommendations.*

Senate One House Budget Proposal

The Senate's proposal is very different than what is proposed in the Executive budget to address excessive pricing of drugs by manufacturers. The Senate creates a Medicaid "global cap" for pharmaceuticals. Under this Medicaid pharmacy global cap scenario, drugs with drastic increases in price would be reviewed by the DURB and, if found to be excessive, would be referred to the Attorney General for pharmacy price gouging and subject to a potential $25,000 fine.

HPA opposes the Senate budget proposal. *The creation of a Medicaid global cap for pharmaceuticals considered by the Senate is overly complex, incalculable, and almost impossible to implement. The list of criteria that would exclude a drug from being counted in the global cap calculation is overly broad and loosely interpreted. Under this construct, it is unclear how the state or independent actuary would ever determine when a single drug pierces the cap over another drug, or series of drugs. The proposal does nothing to alleviate the impact of new drugs being introduced into the marketplace at a price point that limits access to the drug. When the drug is referred to the Attorney General the maximum penalty to the manufacturer that engages in drug price gouging is only $25,000. To multi-billion dollar pharmaceutical manufacturers that spend hundreds of millions on marketing their drugs this penalty is inadequate and has no deterrent value to prevent manufacturers from engaging in excessive pricing and gouging of consumers.*