Testimony on

Opportunities to Improve Health Care

By

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Introduction

My name is David Yoder and I am Executive Director, Member Care and Benefits at the Blue Cross Blue Shield Association's Federal Employee Program (BCBSA FEP).

BCBSA is a national federation of 36 independent, community-based, and locally operated Blue Cross and Blue Shield companies that collectively provide healthcare coverage for one in three Americans. Blue Cross and Blue Shield companies offer quality healthcare coverage in all markets across America and participate in all federal insurance programs, including the Federal Employee Health Benefits Program (FEHBP), Medicare Advantage, Part D, CHIP and Medicaid managed care programs. BCBS companies also serve individuals and employers in the small and large group markets. We are committed to high quality, affordable coverage for all regardless of pre-existing conditions.

For nearly a century, BCBS companies have provided secure and stable healthcare coverage to people in communities across the country, allowing them to live free of worry, free of fear. Serving one-in-three Americans nationwide (over 106 million), BCBS companies, their foundations, and their employees stand committed to their local communities – where they live and work. They do this by creating and supporting programs that drive positive health outcomes addressing some of the most pressing issues affecting the country today: community health disparities, the opioid epidemic and most recently providing aid to those in need after a catastrophic hurricane season.

BCBSA, through the FEHBP, administers health insurance under contract with the U.S. Office of Personnel Management (OPM) to approximately 5.4 million federal employees, retirees and their families. The FEP Director's Office of BCBSA, located in Washington, D.C., manages this contract, acting as the Blue Cross and Blue Shield Plans' agent with the OPM. I would like to thank Chairman Burgess (R-TX) and Ranking Member Green (D-TX) for their leadership in holding today's hearing and providing the opportunity to discuss key ways to improve health care. In my remarks today, I will address:

I. How BCBSA and its member companies are working to reduce fraud and abuse;

II. The need to eliminate "gag" clauses in prescription drug spaces; and

III. Other key prescription drug policy opportunities to ensure people have access to safe, effective prescription medicines at the most affordable price.

Fraud and Abuse

An essential step to ensure the affordability of healthcare is addressing, reducing, and to the extent possible preventing, the opportunity for fraud and abuse. According to the National Health Care Anti-Fraud Association (NHCAA), health care fraud costs taxpayers $68 billion every year and accounts for between three and 10 percent of all healthcare spending in the United States. BCBS companies are diligent in working to stay ahead of fraud (e.g., falsified claims; misrepresenting the provider of service; billing a non-covered service as a covered service) and abuse (e.g., over-prescribing medications; ordering unnecessary tests; keeping patients at the hospital for longer than necessary). The BCBSA's National Anti-Fraud

Department is dedicated to the support and promotion of BCBSA's anti-fraud efforts nationwide, including for the FEHBP program. This effort includes direct investigative support to Blue Plan Special Investigative Units (SIUs), coordination of multi-Plan investigations, working with federal and state law enforcement, and providing subject matter expertise to BCBSA's Office of Policy and Representation, the media, and governmental entities.

BCBS companies' fraud investigation units coordinate investigations with the FBI, the Offices of Inspector General for the U.S. Department of Health and Human Services and the Office of Personnel Management, state police and local police departments. They also assist with state and federal prosecutions. The management team within several BCBS companies' SIUs are in leadership roles with major health care anti-fraud organizations and associations, including the NHCAA. NHCAA membership consists of approximately 90 private health insurers, regulatory agencies, and federal, state, and local law enforcement agencies that have jurisdiction over health care fraud. Plan managers from the following BCBS companies currently serve on the Board of Directors: Florida Blue, BCBS North Carolina, BCBS Massachusetts, Anthem, Health Care Service Corporation, and Blue Shield of California. This representation allows us to strengthen our partnerships, provides development opportunities, allows for information sharing and strengthens our ability to identify, investigate, prevent, and report fraud, waste, and abuse affecting the FEHBP.

Among various governmental efforts, the Federal government established the Healthcare Fraud Prevention Partnership (HFPP) to improve the detection and prevention of healthcare fraud. BCBSA and several of our member companies are active participants in the HFPP. We support

the HFPP for bringing together a diverse population of fraud management, control, and enforcement parties to identify areas of potential risk posed by healthcare fraud and abuse.

We support Congress' desire to establish explicit authority for HFPP and its activities, better equipping them to define the rules and responsibilities of its members and expand the scope of allowable activities to address more in the spectrum of fraud and abuse in our healthcare system. As Congress takes steps to codify the HFPP Charter, we recommend the following improvements to help the Partnership fulfill its objectives:

- While completed studies of existing abuses have demonstrated some success in returning dollars to plans participating in a particular study, the benefits of these studies have not been leveraged nationally. We recommend establishing improved mechanisms to share learnings so all participants are aware of the lessons from the studies and can take action to address similar issues.

- In addition, the Medicare and Medicaid programs have significant clout and can set a national direction among the provider community for fraud and abuse. However, the HFPP appears to be prohibited by its Charter from advising these programs of the schemes it identifies, limiting its overall impact. If, instead, the HFPP were mandated to share such information with Medicare and Medicaid, fraud detection and prevention lessons learned from the HFPP could spread more widely in both the public and private sectors. If such a Charter change is made and produced positive financial results, additional funding for the HFPP may make financial sense, both for the public and private sectors.

- Finally, clarifying the exceptions to sharing PHI/PII in fraud-related matters under HIPAA would improve collaboration and cooperation of those who may be afraid to share important data due to a lack of understanding of allowed exceptions. This action along with some kind of good faith provision to protect employees engaged in fraud-related work when sharing protected information may remove such roadblocks.

“Gag” Clauses

Another key step to improve healthcare is ensuring that consumers have the necessary information to make informed decisions about their care. While not a practice of the FEHBP, some contracts between pharmacies and purchasers (i.e., insurance companies, pharmacy benefit managers, and/or employers) include restrictions or “gag clauses” that prohibit pharmacists from informing consumers that the drugs they want could be purchased at a lower cost if the consumers paid out-of-pocket rather than purchasing through their insurance plan.

For example, if a customer’s health plan has a $20 copayment for a medication, but the plan’s negotiated cost of the drug at the pharmacy is $10, because of a gag clause the pharmacist could not advise the customer that he or she would save $10 by paying for the drug out-of-pocket.

BCBSA does not support the use of gag clauses and is unaware of any Blue Cross and Blue Shield company or contracted pharmacy benefit managers (PBMs) that have gag clauses in place with pharmacies. Furthermore, BCBS companies using major PBMs like Prime Therapeutics, CVS Caremark and Express Scripts do not report use of these gag clauses. The use of these gag clauses is, in fact, not very prevalent.

We commend CMS for taking a tougher position on gag clauses, as noted recently in a letter to health plan sponsors in May clarifying that any form of gag clauses are unacceptable and contrary to their efforts to promote drug price transparency and lower drug prices. We also support current Medicare Part D rules that call for a beneficiary to receive a covered medication for the established copayment or cost-sharing, unless the negotiated cost of the medication is lower.

BCBSA supports legislation to ban gag clauses and any prohibitions on allowing pharmacists to make information about cost savings known to the beneficiary at the point-of-sale. To the extent that some in the industry include such clauses in their contract, consumers may be deprived of information that will help them make prudent decisions when paying for prescription drugs. With this is mind, we would also encourage pharmacists to advise patients on generic substitution and alternative medications so long as this is done in direct communication with the dispensing physician.

Full transparency is critical for consumers to have the necessary information to make choices that work best for them. It also is important that pharmacists advise consumers to consider the impact of not using insurance coverage to pay for prescriptions. While certain beneficiaries

might pay lower out-of-pocket costs on a given prescription, drugs purchased outside of their insurance benefit will not count toward the beneficiary's deductible or maximum out-of-pocket (OOP) limits which may reduce the value of their insurance coverage.

While BCBSA is fully committed to ensuring individuals receive their medications at an affordable price, another trade-off with out-of-pocket payments is the potential health risk to the member. BCBS companies and PBMs have systems in place that check for potentially harmful drug interactions, but prescriptions purchased without insurance will not be in the system. Similarly, a company cannot help a member with medication adherence if it does not know that a member is on a particular drug.

For example, FEHBP operates a Medication Therapy Management program, working with 15 pharmacists to review prescriptions against a member's medical records and interact directly with members to make sure they are getting the best medical care. This program has proven to be effective in improving quality for members through meaningful and timely interactions and generating savings for the FEHB program and the Federal government. For example, in 2017 the program contributed to a 21 percent increase in preventing the dispensing of antibiotics for adults with acute bronchitis, consistent with established standards of care.

Thus, while we support elimination of gag clauses, we believe that pharmacists should also inform consumers of the potential risks of not using their drug coverage so that they can make more informed decisions.

Other Key Prescription Drug Policy Issues

BCBSA applauds the committee for holding this hearing and seeking this opportunity to improve the delivery of healthcare. We support these efforts to drive the healthcare system to higher quality, lower costs and improved access to care for everyone. In line with these goals, more is needed to ensure that people have timely access to safe, effective and affordable cutting-edge prescription medicines when they need them. BCBS companies across the United States have been working to move to value-based and outcomes-based arrangements for prescription medicines to achieve improved quality at lower cost. Based on these experiences as well as BCBS companies' generations of healthcare experience and commitment to ensuring their customers' health needs are met, BCBSA has identified four key strategies to address escalating prescription drug costs and ensure that people have timely access to safe, effective, cutting-edge prescription medicines and their generic equivalents at the most affordable price, and in the right setting. These include:

1) **Reducing barriers that limit competition and consumer choice**. Currently, significant barriers hinder patients' timely access to affordable, safe, effective and cutting-edge prescription medicines and their generic equivalents. Promoting competition and consumer choice will make prescription medicines more affordable.

2) **Promoting greater transparency and sharing of information regarding the pricing of prescription medicines**. Understanding how drug prices are currently established is a necessary step in discussing any policy options that are meant to address the unsustainable rate of rising prices. There should be transparency regarding the pricing of

prescription medicines. Specifically, information about a drug's price and its effectiveness should be widely available to the public. It is also important that health insurers know which new drugs are coming into the pipeline. This allows health insurers to work with doctors and pharmacists in planning and in working to ensure there are ways to get prescription medicines to patients at the most affordable cost.

3) **Providing medical and healthcare professionals with the tools they need to support patient education and adherence**. BCBS companies support policies that give medical professionals the tools they need to educate and support patients in taking their prescription medications as directed. Unfortunately, nearly three out of four people report that they do not always take their prescription medicine as directed. Addressing this problem would improve patients' health and safety, prevent adverse side effects and unnecessary hospitalizations, and, as a result, help to rein in costs.

4) **Promoting additional regulatory changes that help patients get the right medicines for them, at the most affordable prices.** BCBS companies believe that a number of regulatory adjustments can be made to increase competition and improve patient access to affordable prescription medicines, such as the off-label use of prescription drugs is regulated by the FDA, modifying drug marketing guidelines to improve transparency around pricing and effectiveness, and increasing patient access to more affordable medicines by allowing generic drug manufacturers access to brand-name products.

More information on these recommendations can be found in our recently published BCBSA white paper, "Ensuring Patient Access to Safe, Effective and Affordable Prescription Medicines."[1]

Again, we commend the committee for taking on these important issues as it is critical that all stakeholders work together to ensure the affordability of healthcare for all Americans. Achieving this important goal will require the public and private sectors to collaborate to develop solutions that benefit patients and the entire health system.

Again, thank you for the opportunity to testify today and your leadership in seeking opportunities to improve healthcare.

[1] "Ensuring Patient Access to Safe, Effective and Affordable Prescription Medicines," https://www.bcbs.com/sites/default/files/file-attachments/page/DrugPricing_WhitePaper_110317.pdf