



STATE OF WISCONSIN  
GOVERNOR'S TASK FORCE ON  
REDUCING PRESCRIPTION DRUG PRICES

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**Meeting Minutes**

November 20, 2019

10:00 a.m. – 2:00 p.m.

Hill Farms State Office Building, Room N 108  
4822 Madison Yards Way, Madison, WI 53705

**Task Force Members Present:** Nathan Houdek, Yolanda Tolson-Eveans, Anna Benton, Lara Sutherland, Brian Stamm, Sen. Tim Carpenter, Rep. Tyler Vorpapel, Lisa Lamkins, Tony Fields, Ian Hedges, Brent Eberle, Robyn Schumacher, Peter J. Fotos, Janet Fritsch, Alan Lukazewski, Sue Wilhelm, Brian Stephens, Josh Bindl, Michael Goldrosen, Duane Harlow (attending in place of Laura McFarlane)

**OCI Staff Present:** Mark Afable, Jennifer Stegall, Olivia Hwang, Julie Walsh, Megan Aubihl, Jessica Carlson

**Public Attendees:** Liz Smalley, Denise Tucker, Scott Tyre, Tim Lundquist, John Trochlell, Jane Horvath, Hemi Tewarson, Sandra Wilkniss, Laura Rose, Rebecca Hogan, Ted Osthelder, Karla Ashenhurst, Katie White, Kerry Manion, Jonathan Moody, Melissa Duffy, Dennis Majeskie, Amy Sholis, Chris Mleczko, Lisa Johnson, Mary Haffenbredl, Jordan Lamb, Mollie Zito, Nick Probst, Nancy Wenzel, Jeanine Schneider

**Welcome**

- Commissioner of Insurance Mark Afable thanked all attendees and members of the task force.

**Video from Gov. Tony Evers**

- Welcomed and thanked the task force members for the important work the task force is doing.

**Video from Sen. Tammy Baldwin**

- Thanked the task force members for their efforts to help bring down drug prices and help Wisconsinites with the growing costs of prescription drugs.

**Opening Remarks**

- Nathan Houdek, OCI Deputy Commissioner and task force chair, thanked the task force members and outlined the two main objectives for the meeting:
  - To provide an opportunity to level set their understanding of pharmaceutical supply chain, what is happening at a federal level, and learn about current legal action; and
  - Get to know each other, and encourage and foster a robust dialog.

**Member Introductions**

- Task force members introduced themselves, outlining their background, expertise, and current roles.

**Wisconsin Department of Justice Update on Prescription Drug Lawsuits**

- Assistant Attorney General R. Duane Harlow shared information about the developments in prescription drug lawsuits.
  - He first outlined the antitrust lawsuit against the maker of Suboxone, an opioid replacement therapy, for which Wisconsin is the lead state in the litigation. The State



- asserts that the manufacturer sought to extend its period of exclusivity (with monopoly pricing) by manipulating the process, preventing generic drugs to come onto market.
- Harlow explained litigation that is moving forward against generic drug manufacturers. A lawsuit, which includes 46 states, alleges generic drug manufacturers conspired to fix prices, rig bids, and behave in other anticompetitive conduct.
  - He stated that these unlawful practices created higher prices which could negatively affect hospitals and pharmacists, health insurance premiums and plans, Medicare and Medicaid programs, and the individual consumers.

### **Understanding the Prescription Drug Supply and Financing Chain**

- Hemi Tewarson of the National Governors Association and Jane Horvath of Horvath Health Policy gave a presentation providing an overview of the prescription drugs supply and financing chain.
  - Horvath defined the purchase/payment terms in the industry [list price, wholesale acquisition price (WAC), average wholesale price (AWP), maximum allowable cost (MAC), and average manufacturer price (AMP)]
  - Horvath explained the major stakeholders and what each does:
    - *Manufacturers* bring drugs to market, set the price, lease the drug license, manage the drug life cycle, including sales and marketing, and are regulated at the federal level.
    - *Wholesalers* buy in large quantities, store prescription drugs, sell and shop, can serve as a specialty pharmacy on behalf of manufacturers of health plans or as a Pharmacy Services Administration Organization (PSAO), and are regulated by states and federal FDA.
    - *Pharmacy Benefit Managers (PBM)* create pharmacy networks, operate formulary, pay claims, and collect manufacturer price concessions. Not all PBMs are licensed by the State.
    - *Insurers* contract with PBMs, set overall premiums, run grievance and appeals, and are generally state licensed.
    - *Pharmacies* can be retail pharmacies, which are open to the public, or specialty pharmacies, which are generally not open to the public. They are licensed by states and somewhat by federal programs.
    - *Pharmacy Services Administration Organizations* contract with PBMs and health plans, negotiate discounts, process claims/resolve disputes, monitor performance, and update performance monitoring in compliance with health plan/PBM contracts.
  - Horvath noted that the Medicaid rebate program complicates policy decisions.

### **State and Federal Action Addressing Prescription Drug Access and Affordability**

- Sandra Wilkniss of the National Governors Association and Jane Horvath gave an overview of federal and industry action.
  - Wilkniss explained briefly four ways states have tried to combat rising prescription drug prices: importation, public-private group purchasing, price gouging, and pay for delay.
  - She expanded on four additional measures:
    - *Regulation of PBMs* – A prominent area of action in recent years (40 bills addressing PBMs enacted in 2019 in 27 states).



- *Regulation of insurers* – States are pursuing a variety of approaches to regulate insurer benefit design and limit consumer cost sharing (32 bills addressing insurance design enacted in 2019 across 24 states).
- *Price transparency* – Transparency is a major focus in recent years regarding both drug prices and PBM behavior (California, Nevada, Vermont).
- *Affordability boards* – To address prices directly, states (Maine, Maryland, Ohio) enacted laws to establish authorities to review drug pricing and affordability.
- State Example: Massachusetts
  - Accountability for drug manufacturers
  - Increase state oversight of PBMs
- Public programs - States have been active in advancing strategies to improve purchasing and manage access and costs for public programs, including pharmacy benefit management, PBM contracting, reverse auction procurement, 340B oversight, 340B for corrections, alternative payment approaches, affordability approaches, and multi-agency purchasing.

#### **Overview of Legal Challenges to State Action**

- Sandra Wilkniss of the National Governors Association and Jane Horvath gave an overview of the legal challenges.
  - Manufacturer challenges are primarily related to efforts to address transparency and price gouging.
  - Manufactures allege violation of trade secret laws, dormant commerce clause, due process, free speech, and federal patent laws.
  - State examples: California (PhRMA v Brown), Nevada (PhRMA and BIO v Sandoval) and Maryland (AAM v Frosh)
- PBM challenges are primarily related to efforts to address transparency and disclosures, fiduciary duty, and MAC pricing. Presenters also discussed the focus on alleged violations of ERISA preemption.

#### **Open Discussion**

- Several task force members expressed their desire for a wholistic approach.
- Task force members expressed concerns that transparency needs to be meaningful.
- Some members requested the task force consider making changes that could optimize the current programs with streamlining and standardization.

#### **Other Business**

- The next meeting will be held January 22, 2020 in Milwaukee.
- Meetings will be on the third Wednesday of each month starting in February.
- The staff of the task force will distribute a draft of a 2020 work plan.
- The task force website will be live soon.
- Chair Houdek extended an invitation to industry experts, consumer advocates, and stakeholders to continue to participate in the task force.