



June 23, 2021

Re: Letter in Opposition to SB 844

Dear Members of the Oregon Senate:

Aimed Alliance is a 501(c)(3) non-profit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. We are writing to express our support for reasonable efforts to lower prescription drug costs for Oregonians. However, we strongly oppose SB 844, which would create a Prescription Drug Affordability Board to set price caps on prescription medications, because it could harm Oregon patients and providers.

I. Summary

SB 844 would create the Prescription Drug Affordability Board (Board) to review prices for prescription drugs meeting certain cost criteria. The Board would be required to set price caps for drugs that it determines are too expensive. Health care providers are not permitted to bill more than the Board-established price for a prescription drug regardless of whether the drug is dispensed or administered. If manufacturers or other parties do not comply with price concessions, the Board can request an injunction and restitution. Drug manufacturers are assessed an annual fee to cover the costs of the Board.

II. Price Caps Stifle Innovation and Access

SB 844 requires the Board to establish price caps on certain medications. Yet, price caps can reduce innovation and limit patient access to medically necessary treatments. Analogously, the federal bill, H.R. 3: the Elijah E. Cummings Lower Drug Costs Now Act, proposed certain price caps.¹ As a result, the Congressional Budget Office estimated that eight to 15 fewer new drugs would come to market from 2020-2029, and 30 fewer new drugs in subsequent decades.² Another study by the California Life Sciences Association found that the price controls in H.R. 3 would reduce the number of drugs brought to market by small and emerging drug makers in California by 88 percent and eliminate over 80,000 biotech research and development jobs nationwide.³

Price caps established in Oregon could result in nationwide pricing controls because the Medicaid Best Price Rule would likely be implicated. The Medicaid Best Price Rule requires that drug makers give Medicaid programs the lowest price for their prescription drugs among nearly all purchasers, subject to certain exclusions.⁴ The best price calculation is inclusive of applicable discounts, rebates, or other transactions to adjust prices offered to private plans.⁵ Therefore, any pricing reductions offered to plans in Oregon would have to be offered to Medicaid plans throughout the country. As a result, impacted drug makers may have reduced resources to invest in

¹ <https://www.congress.gov/bill/116th-congress/house-bill/3/text>

² https://www.cbo.gov/system/files/2019-12/hr3_complete.pdf

³ <https://califesciences.org/new-data-foreign-reference-pricing-proposal-in-h-r-3-would-slash-life-saving-rd-and-lead-to-destruction-of-californias-life-sciences-sector/>

⁴ 42 U.S.C. 1396r-8

⁵ 42 U.S.C. 1396r-8

research and development of new drugs after offering nationwide discounts. Alternatively, rather than offering price concessions, drug makers could choose not to market their medications in Oregon, reducing access for Oregon patients who require such treatments. As such, vulnerable patients who need access to medication impacted by this bill would be directly harmed.

III. Price Caps Could Harm Providers

SB 844 could result in significant revenue loss for health care providers. SB 844 prohibits health care providers from billing an amount for a prescription drug product that exceeds the price cap regardless of whether the drug is dispensed or administered. However, many health care providers engage in the practice of buy-and-bill, in which they may purchase a medication in large quantities to administer in the future. The Board may set a price cap after a practitioner has already purchased a large quantity of a particular medication at the higher price. In that case, the practitioner could experience a significant loss of revenue when billing patients for administering that drug at the capped rate. Moreover, practitioners would not be able to collect the small fee that they typically charge to patients to administer the drug. Together, these changes could result in significant revenue losses that could force some struggling medical practices to go out of business, exacerbating existing practitioner shortages in the state.⁶

IV. Pricing Calculations Could Result in Discrimination

SB 844 does not state how price caps will be calculated. Given that one purpose of SB 844 is to prevent health inequities, it is important that methods for calculating the value of medications do not result in discrimination. As such, if SB 844 moves forward, Amed Alliance recommends that the bill be amended to expressly prohibit the use of quality adjusted life year (QALY) or any similar measure to calculate price caps. Such a prohibition reflects a long-standing ethical concern that QALYs lead to discrimination based on age and health status, unfairly favoring younger and healthier populations. Patients with health conditions are valued at less than whole, and QALYs do not adjust for disease remission. Therefore, despite long-term stability without disease progression, patients are never valued as whole. Moreover, QALYs put a price tag on the value of a human life that merely reflects the individual's diagnosis and deems those with chronic, complex, debilitating, and rare conditions as being worth less than the rest of the population. They treat individuals' lives and health as a commodity and ignore the patients' and practitioners' individualized concept of the value of treatment. QALYs are then used by insurers and other payers to justify limitations on patient access to treatment, all of which can be harmful. Therefore, Amed Alliance requests that SB 844 be amended to prohibit the use of QALYs in calculating drug pricing caps.

For these reasons, we oppose SB 844. Please contact us at policy@aimedalliance.org if you have any questions or concerns.

Sincerely,

Stacey L. Worthy
Counsel

⁶ <https://www.oregon.gov/oha/HPA/HP-PCO/Documents/2016-PC-HPSA-Map.pdf>;
<https://www.thelundreport.org/content/too-few-nurse-practitioners-work-primary-care-oregon-study-shows>