Capital BLUE

Public Testimony
House Consumer Affairs Committee
House Bill 853, PN 0967

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Good Morning, Chairman Roae, Chairman Matzie and members of the House Consumer Affairs Committee, I am Douglas Furness, Senior Director of Government Affairs for Capital BlueCross ("Capital"). Thank you for the opportunity to provide comments on House Bill 853. The legislation, sponsored by Representative Donna Oberlander, amends the Unfair Insurance Practices Act by defining an unfair or deceptive act as denying or otherwise failing to provide continued coverage for a health care benefit that was included in the insured's health insurance policy.

My testimony today will mirror that which I delivered to this committee in 2018 on House Bill 2113, also sponsored by Representative Oberlander.

Capital has been providing high quality health insurance to residents of Central Pennsylvania and the Lehigh Valley for 80 years. We have a long track record of providing exceptional customer service to our policyholders, and we are proud of the service we provide.

We also work each day to provide education and clarity to consumers on the benefits provided for in their policies. As drafted, and with the subject matter of the continued changing landscape of pharmacy benefits, Capital has numerous material concerns with the bill before us today and believes that it will have numerous unintended consequences.

House Bill 853 would greatly hinder our ability to work with our customers to provide the best health outcomes for them.

Let me begin by noting Capital cannot change the rates, copayment, coinsurance or deductible for a policyholder in the middle of a policy year. Because our forms are reviewed and approved, Capital also cannot remove a benefit from an insured's policy without the approval of the Insurance Department.

With this in mind, we question the extent of any problem being discussed here today and believe any problem – should it exist - could be better handled between the aggrieved parties outside the legislative process. We hope the advocates for the legislation will provide specific examples outlining the extent of the problem so that the committee can determine if they are unique to a few cases or systemic in nature.

As to the bill, it seems focused on addressing the treatments provided to individuals suffering from chronic illnesses like diabetes or hemophilia. The treatments for these types of conditions are primarily pharmaceutical therapies aimed at the maintenance or control of the illness. The bill would hinder and significantly delay insurers' ability to make necessary benefit changes to a formulary when a drug is not safe, does not work as demonstrated by changing and new clinical evidence or a lower cost alternative is found.

Admittedly, the legislation states that its limitations would not apply if the US Food and Drug Administration (FDA) issues a statement declaring a drug unsafe. In some instances, however, researchers discover unsafe pharmaceutical products after they have been approved by the FDA – some studies have said that as many as a third of drugs approved by the FDA between 2001 and 2010 went on to have serious safety

issues. The bill would prevent insurers from removing an unsafe drug from its formulary until the FDA determines it to be unsafe.

We also question if the bill would prevent insurers from undertaking internal efforts to limit the prescription of dangerous opioid medications which the Commonwealth has declared to be a public health crisis. In recent years, Capital has taken steps, without legislative mandate, to limit the dosages of opioid prescriptions because clear clinical information demonstrates that the higher the dosage of an opioid, the more likely someone is to have an adverse outcome - including the potential development of substance use disorder and addiction.

These steps, it appears would be prevented until and unless the FDA acts under the bill before us. That is problematic and demonstrates a need to revisit the direction suggested.

The bill will also prevent insurers from removing drugs from formularies that simply don't work for a specific indication. When the FDA approves a drug, the drug is added to some formularies. Studies on the effectiveness of these drugs – peer reviewed studies by outside medical journals - are ongoing and in some cases find that a particular drug is ineffective for certain conditions and sometimes for variants of certain conditions.

The FDA continues to be pressured by the pharmaceutical industry and some policy makers to approve drugs more rapidly. The result in some circumstances is that drugs, while safe to use, are not effective in treating the disease in question. That is a problem for insurers and patients.

When this is the case, we then remove the drug from our formulary and allow for a transition to another treatment protocol. It is done and guided via set of clinicians guiding the process. We think this is in the best interest of the policyholder and it simply makes sense.

The policyholder and his or her doctor are notified of any change and given as much as six months to appeal the decision. The initial appeal is done internally and if the policyholder's appeal is denied, an external appeal is then available to them. While available, it is only utilized by a small number of Capital policyholders. Capital simply does not see a large number of appeals in this area.

We now see many drug treatments costing well above a $1 million per year per patient. We have seen some drugs where after FDA approval, subsequent clinical studies showed the drug to be ineffective in providing any meaningful clinical improvement in those treated with the drug. Sometimes this is true for very specific types of diseases or related to specific gene types.

The bill before us, while well intentioned, would require continued coverage of sometimes ineffective treatment for the balance of the policy year, ultimately delaying the transition of policyholders to more effective treatments and potentially costing the employers and policyholders.

While some illnesses have few pharmaceutical treatments available to patients, some illnesses have several treatment options available. As new drugs come to the market to compete with existing drugs, prices for some treatments decline. Diabetes is a condition

that has several treatment options available to patients. Those drugs treating diabetes are chemically identical with the only difference being price. This bill would prevent Capital from seeking the best and most appropriate treatment option which is also the most affordable.

As drug prices continue to soar – the price of the twenty most commonly prescribed drugs have increased 12% per year over the last decade – insurers struggle to provide the most appropriate treatment option available at the most affordable cost. Without the ability to reduce unnecessary costs from healthcare in a timely fashion, we are left with unsustainable growth in costs and rapidly rising premiums. This bill would destabilize this balance, driving up costs for insurers and rate payers.

We also question why the legislation does not apply to government programs. Is that an oversight? The Medicaid, CHIP and PACE programs all make similar decisions when dealing with chronic disease management. They do so because it makes sense and works. They try to develop treatment protocols for those populations that are safe, effective and affordable – Just as insurance companies do. As this legislation moves forward, we think government programs should weigh in to this proposed mandate.

Finally, many Pennsylvanians – as much as 50% of the market - receive their health insurance from companies or organizations that are self–insured. Those plans are regulated by ERISA and not subject to state laws. If the complaints that have been expressed here today originated in self-insured plans, little could be done to help those individuals as this legislation does not apply to self- insured plans.

Again, thank you for allowing me to testify on House Bill 853. As you can see, Capital has serious reservations with the bill and urges the committee to move carefully with its future consideration.