

Federal Health Policy Report for CalPERS August 2016

I. PRESCRIPTION DRUG PRICE/COST DEVELOPMENTS OF RELEVANCE TO CalPERS:

- A. Mylan receives significant scrutiny on raising EpiPen pricing:** Since 2007 when Mylan purchased the rights to the EpiPen -- (a device often carried by those with severe allergies to help prevent potentially fatal anaphylaxis), it has increased the price from \$56.64 to \$317.82, a 461 percent increase. Of particular note, since 2013, it has raised the price 15% every other quarter. The pens must be replaced every 12-18 months meaning these are significant recurring costs for millions of Americans. This has attracted substantial public and Congressional criticism and media scrutiny, with several members of Congress calling for hearings and investigations by the FDA and FTC. Democratic Presidential candidate, Hillary Clinton, called the practice “outrageous” and cited it as another example of pharmaceutical companies raising prices without justifying the value behind it and called on Mylan to reduce the price. Mylan, in response to this criticism, announced that they will increase coupons for consumers and produce an authorized generic product at half the price of the branded to help mitigate the costs. This was met by skepticism from many, as coupons would do little to address the impact of the increased price on costs for payers such as employers, taxpayers and others paying insurance premiums and the practice of branded products producing “authorized” generics is a frequently used tactic by PhRMA companies to discourage competition from other generics.
- B. Survey finds employers see prescription drugs, particularly speciality products driving costs:** According to [an annual survey](#) conducted by the National Business Group on Health, employers expect health care costs to increase by 6 percent in 2017, a rate unchanged from the past two years. Employers expect premiums to increase by 5 percent in 2017. One of the biggest drivers of health care costs are specialty pharmaceuticals. Nearly one-third of employers cited specialty pharmaceutical as the highest driver of costs and four out of five said it was one of the top three drivers. That compares with 6 percent who cited specialty pharmaceuticals as the top cost driver in 2014. The survey included 133 employers with more than 15 million employees and their dependents.
- C. AHIP study finds many orphan drugs being used for other diseases:** According to a new [report](#) by America’s Health Insurance Plans (AHIP), almost half of orphan drugs, those developed to treat rare diseases, were used for other purposes. These drugs have small markets which disincentivized drug makers from spending the necessary money on research and development to find cures. The Orphan Drug Act was intended to incentivize the development of orphan drugs by providing drugmakers a 50 percent tax credit for research and development expenditures and a seven-year exclusivity period

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that effectively protects these products from competition. The AHIP study found that of its sample of 46 orphan drugs available between 2012 and 2014, 47 percent of the drugs' usage was for non-orphan purposes. The report examined price increases of all of the drugs included in the sample, and then compared increases between drugs with different uses. The average price increase for the sample was 26 percent. However the greatest price increases, an average of 37 percent, were for orphan drugs prescribed primarily for non-orphan uses. Orphan drugs used almost exclusively for their original purposes saw an average price increase of 12 percent between 2012 and 2014. The drug industry pushed back against the study, saying it failed to recognize the success of the orphan drug law and ignored discounts negotiated by payers. It also argued allowing orphan drugs to be used for other purposes is an important incentive to keep looking for new treatments.

- D. CalPERS Implications:** Additional studies continue to demonstrate that specialty drugs are a significant driver of costs, but as cases such as the EpiPen controversy show, other categories of drugs, including generics, should not be overlooked for their potential to increase costs for CalPERS in the long and short term. Particularly concerning is many generic companies picking up on tactics long used by PhRMA such as the example of Mylan producing an authorized generic, a practice the CEO of Mylan once said in 2006 before Congress could end the generic industry. CalPERS should continue to look at ways to moderate the impacts of these increasing costs and consider the impact of new tactics being employed even by generics that will potentially have significant cost implications.
- E. CalPERS Next Steps:** Since the upward prescription drug cost trend shows no signs of abating, we will continue to work with CalPERS staff to shed public light on the implications of problematic pricing practices and support policies and other interventions to moderate this trend. We will also continue to advocate for tools that empower CalPERS as a purchaser. Moreover, CalPERS staff and consultants will continue to seek out and consider supporting efforts designed to lower overall prescription drug cost growth.

II. CADILLAC TAX UPDATE

- A. Employers largely still planning for the Cadillac Tax:** Although the ACA's excise tax on expensive health plans has been delayed until 2020 - and some observers predict it may never take effect as members of both parties show significant opposition to it - few employers indicated that these changes and signals have altered their health plan offerings. According to a recent National Business Group on Health survey, just 1 in 5 employers surveyed said they are delaying their cost containment initiatives to avoid the excise tax because of its delay. The survey also found 53 percent said that at least one plan they offer would hit the threshold and 35 percent said that their plan with the highest enrollment would be subject to the tax.

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- B. CalPERS Implications:** While having both political parties signal major concerns with the Cadillac tax as currently constructed is encouraging, relatively little substantive work to reform, repeal or delay the currently flawed policy has occurred. One of the only replacement plans put forward thus far is Speaker Ryan's "A Better Way" health care proposal, which would cap the tax exclusion of employer sponsored health insurance. This proposal was met with significant hostility from employer and labor groups with the ERISA Industry Committee concluding that the policy would ultimately result in "lower pay" for workers. As such, continued efforts to raise concern and urge action is advisable. Discussion and debate will continue on this issue, particularly after the 2016 election and as we get closer to 2020 regardless of which party wins the Presidency.
- C. CalPERS Next Steps:** Continue to review, develop and promote helpful regulatory and legislative reform interventions that would mitigate against any negative impact on CalPERS plans and keep the Board informed of opportunities in this regard.

III. DELIVERY REFORM DEVELOPMENTS:

- A. ACOs saved \$500 million last year:** Medicare's accountable care organizations saved \$466 million in 2016 according to [data released](#) by CMS on August 25. The majority of the savings, \$429 million, was produced by 392 organizations in the Medicare Shared Savings Program while twelve organizations in the Pioneer ACO program saved \$37 million. Approximately 30% of the groups, 125 organizations, reduced spending enough to receive savings. On the other side, nearly half of ACOs did not achieve any savings. CMS pointed to data showing that ACOs improve their performance over time.
- B. MACRA Implementation ongoing with physician criticism:** The implementation of the Medicare Access and Chip Reauthorization Act of 2015 payment system change continues amidst some criticism. According to one op-ed authored by the CEO of a health IT consulting firm, unless reformed the current system will encourage further consolidation of physician practices as it rewards larger physician groups more than smaller ones. He advocates changes to enable better collaboration between small groups and the creation of virtual networks for smaller practices.
- C. CMS Announces Regions for their Primary Care Plus Model:** On August 1st CMS [announced](#) that 14 regions will participate in its new Comprehensive Primary Care Plus (CPC+) initiative, a five-year model designed to reform primary care delivery across public programs and commercial insurance. California is not one of the regions. The agency, which originally wanted to implement the model in as many as 20 regions, selected the regions based on insurer interest and coverage. CMS also released [a list](#) of participating commercial insurers and state Medicaid agencies. Nearly 70 insurers/state Medicaid agencies have agreed to participate in the model.
- D. Independence at Home Demonstration Shows Strong Results:** According to a [new analysis](#) released by CMS on August 9th, the Independence at Home Demonstration continues to provide high quality primary care services for chronically ill Medicare beneficiaries in the home setting while saving the Medicare program money. The CMS

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analysis found that, for the second performance year, Independence at Home participants saved Medicare more than \$10 million – an average of \$1,010 per beneficiary – while delivering higher quality patient care in the home. CMS will award incentive payments of \$5.7 million to seven participating practices that succeeded in reducing spending while improving quality. In the second performance year, 15 practices served more than 10,000 Medicare beneficiaries. According to the CMS analysis, all 15 practices improved quality from the first performance year in at least two of the six quality measures for the Demonstration.

- E. CalPERS Implications:** These Medicare delivery reform efforts continue to move the largest purchaser of healthcare in the country towards a value-based system and will encourage expedited adoption of these models by providers and other purchasers.
- F. CalPERS Next Steps:** To continue to review these proposed demonstrations to ensure they are consistent with CalPERS' current initiatives. In addition, review the findings of these delivery demonstrations once they are available and consider their implications to ongoing work and potential for further application to system contracting with plans and providers participating in CalPERS.

IV. MISCELLANEOUS UPDATES

- A. Exchanges facing difficulties, likely to play a role in the Presidential election:** On August 15th, Aetna announced they would pull out of 11 of 15 ACA marketplaces due to significant losses on the exchange, though some questioned the timing as the Department of Justice recently blocked Aetna's merger with Humana. This adds to a growing number of insurers, including UnitedHealth and Humana, which have pulled out of a number of ACA marketplaces as well as collapses of many of the non-profit co-ops. The number of consumers with only one insurer is expected to increase significantly as the Kaiser Family Foundation projects that 31 percent of counties will have just one insurer next year, compared to 7 percent this year. Critics say that this vindicates their criticisms of the ACA as being a fundamentally flawed law. Supporters state that this represents a transition year and that achievable regulatory and legislative reforms can stabilize the market permanently. Also, to comfort a largely confused public attempting to filter conflicting information from the media, supporters accurately state that less than 6 percent of Americans are enrolled in the exchanges. Regardless of position, the stability of the exchanges is likely to take a larger role in the election, as Secretary Clinton has outlined a series of reforms to improve the law including policies to help steady the exchanges, while Donald Trump has pledged to completely repeal the ACA, (though he has yet to articulate a detailed vision for his replacement plan). It is worth noting, though, that the exchange difficulties are largely regional and Covered California has proven that a largely stable and sustainable exchange market can be developed and secured.
- B. CMS Announces New Regulations to Improve Marketplace:** In response to problems facing the exchanges, CMS on August 29th announced a proposed rule for the

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marketplace in 2018 to help strengthen and address criticism of the market. These included a revised risk adjustment formula that includes drug utilization data, transfers to help improve the risk-sharing benefits, as well as new standardization of plan options and tools for assessing networks of competing plans. Initial responses to these changes were largely positive and seen as a step in the right direction in making needed fixes to the exchanges.

- C. CMS investigating allegations of dialysis organizations pushing patients into exchange plans:** CMS is asking the public for information about providers and organizations that may be steering Medicare or Medicaid-eligible patients toward the ACA's insurance exchanges in order to receive higher reimbursement rates. The move appears to be a response to complaints from insurers that some third-party organizations are undermining the risk pool in the ACA by subsidizing premiums for high-cost patients who should be covered by another government program. CMS released a request for information August 18th and sent [letters](#) to all Medicare-enrolled dialysis facilities about the action. UnitedHealth Group, filed a lawsuit accusing American Renal Associates of illegally funneling money through a not-for-profit patient assistance group to pay insurance premiums for patients.