



**NEVADA LEGISLATURE  
COMMITTEE TO CONDUCT AN INTERIM STUDY  
CONCERNING THE COSTS OF  
PRESCRIPTION DRUGS  
([Senate Bill 276 \[2019\]](#))**

**SUMMARY MINUTES  
July 1, 2020**

The third meeting of the Committee to Conduct an Interim Study Concerning the Costs of Prescription Drugs for the 2019–2020 Interim was held on Wednesday, July 01, 2020, at 9 a.m. Pursuant to Section 1 of Governor Steve Sisolak’s [Emergency Directive 006](#), there was no physical location for this meeting.

The agenda, minutes, meeting materials, and audio or video recording of the meeting are available on the Committee’s [meeting page](#). The audio or video recording may also be found at <https://www.leg.state.nv.us/Video/>. Copies of the audio or video record can be obtained through the Publications Office of the Legislative Counsel Bureau (LCB) ([publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us) or 775/684-6835).

**COMMITTEE MEMBERS PRESENT:**

Senator Yvanna D. Cancela, Chair  
Assemblywoman Shannon Bilbray-Axelrod, Vice Chair  
Senator Joseph (Joe) P. Hardy, M.D.  
Senator Julia Ratti  
Assemblywoman Melissa Hardy  
Assemblywoman Connie Munk

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Kelly S. Richard, Senior Principal Policy Analyst, Research Division  
Patrick B. Ashton, Senior Policy Analyst, Research Division  
Crystal Rowe, Research Policy Assistant, Research Division  
Alex Drozdoff, Research Policy Assistant, Research Division  
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division  
Eric W. Robbins, Principal Deputy Legislative Counsel, Legal Division  
Tyler J. Sherman, Deputy Legislative Counsel, Legal Division

*Items taken out of sequence during the meeting have been placed in agenda order.*

## **AGENDA ITEM I—OPENING REMARKS**

Chair Cancela called the meeting to order and discussed meeting protocol.

## **AGENDA ITEM II—PUBLIC COMMENT**

Chair Cancela called for public comment.

Vivian Leal, multiple sclerosis patient and health care team lead, Indivisible Northern Nevada, submitted written comments detailing the high cost and lack of transparency associated with the medication remdesivir, which is manufactured by Gilead Sciences, Inc., and is currently being used to improve survival rates of the Coronavirus Disease of 2019 (COVID-19) ([Agenda Item II A](#)). Ms. Leal encouraged the Committee to examine predatory pricing across the entire pharmaceutical industry.

Khanh Pham, President, Nevada Pharmacy Association, provided written remarks supporting legislation that prohibits pharmacy benefit managers (PBMs), health insurers, and state plans from accepting a rebate from a manufacturer unless the entire value is passed on to the patient at the point of sale ([Agenda Item II B](#)).

Maya Holmes, Healthcare Research Manager, Culinary Health Fund, thanked the Committee for its work to address the costs of prescription drugs. Ms. Holmes shared written testimony urging the Committee to consider proposals that focus on the fundamental issue of prescription drug costs being determined by drug companies ([Agenda Item II C](#)).

David Peightal, Director, Nevada Pharmacy Association, provided written comments expressing support for legislation requiring PBMs to pass on manufacturer rebates to the patient ([Agenda Item II D](#)). Mr. Peightal acknowledged the need to regulate PBMs in order to ensure patients have affordable access to medication.

Carmella Gadsen, Nevada resident, commented on the actions of the pharmaceutical company Gilead Sciences, Inc. to capitalize on the COVID-19 pandemic. She indicated remdesivir costs \$3,120 for a course of treatment in the United States as opposed to \$2,340 in other countries. Ms. Gadsen noted the Institute for Clinical and Economic Review estimated the cost of recovery pricing for a course of treatment for remdesivir is \$10. She implored the Committee to regulate and minimize price gouging by pharmaceutical companies.

Ashley Yuill, Nevada resident, detailed her efforts to afford the necessary medication to treat her husband's skin disorder. She noted the only effective medication is not covered by her insurance company and causes a great financial hardship on her family. Ms. Yuill urged the Committee to lower the costs of prescription drugs so families do not have to sacrifice essential medications due to affordability.

Jennifer Cantley, Nevada resident, shared the struggle she faces trying to afford the medication necessary to manage her autoimmune diseases, her children's asthma, and other various health issues. Ms. Cantley expressed gratitude for her current coverage through the Nevada Medicaid program; otherwise, she could not afford any medication for her family. She asked the Committee to be a leader and show the rest of the country how to take care of its citizens.

### **AGENDA ITEM III—APPROVAL OF THE MINUTES FOR THE MEETING ON FEBRUARY 28, 2020**

**MOTION:** Vice Chair Bilbray-Axelrod moved to approve the minutes of the February 28, 2020, meeting. The motion was seconded by Senator Hardy and passed unanimously.

### **AGENDA ITEM IV—PRESENTATION ON THE NORTHWEST PRESCRIPTION DRUG CONSORTIUM, AN INTERSTATE PRESCRIPTION DRUG PURCHASING COALITION BETWEEN THE STATES OF OREGON AND WASHINGTON**

Trevor Douglass, D.C., M.P.H., Oregon Prescription Drug Program and Pharmacy Purchasing Director, Oregon Health Authority, and William Hayes, Director of Pharmacy, Washington State Department of Corrections, and member of the Northwest Prescription Drug Consortium Steering Committee, shared a presentation ([Agenda Item IV](#)) outlining the Consortium.

Mr. Douglass began the presentation by discussing: (1) an overview and history of the Consortium; (2) the features and composition of the PBM services program; and (3) the free, state-sponsored prescription discount card program.

Mr. Hayes elaborated on the Consortium's group purchasing option and prescription drug voucher programs. He outlined the program features and benefits to participating government agencies and nonprofit institutions.

Mr. Douglass continued the presentation by discussing the following as they relate to the Consortium:

- Development of a Medicaid fee-for-service pharmacy management solution;
- Full transparency in PBM contracting;
- Experience with the public sector employee programs and discount card program; and
- Future direction for the Consortium, including opportunities for growth in other states.

Responding to questions from Senator Hardy, Mr. Douglass noted the Consortium is multifaceted with various programs that support a multitude of participating entities. He cited self-insured groups may benefit from a structured PBM solution while workers compensation plans may use products to structure their pharmacy benefit strategies to large public employee groups using various products. He noted all of the plans benefit from the same guarantees regardless of entity size.

Mr. Douglass said the Consortium's discount drug card program is available to anyone residing in Oregon or Washington, and it provides features comparable to other discount card programs. He stated the program's discounts are consistent, do not rely on managed elements or manufacturer coupons to provide savings, and in most cases, outperform other discount cards on the market.

Senator Hardy and Mr. Douglass discussed the state funding used to administer the program. Mr. Douglass noted the Consortium uses state funds to staff two paid positions; however, the program's savings offset the salary expenses.

Senator Ratti asked whether legislation required the participating entities to pass down the savings received to the patient level.

Mr. Douglass explained the Consortium continues to explore possibilities to pass rebates down to the individual consumer and is working to find an effective solution. He indicated the Consortium has been able to work with various benefit boards to offer \$0 copays on certain diabetic medications.

Responding to a question from Senator Ratti regarding the lessons learned by the Consortium, Mr. Douglass acknowledged the dynamic nature of the pharmacy supply chain and its need to adapt to constantly evolving strategies. He stressed the importance of the Consortium to act in the best interest of the public.

Vice Chair Bilbray-Axelrod questioned the differences between a state run prescription drug card versus a privately run prescription drug card.

Mr. Douglass responded the Consortium's drug discount card is backed by the individuals using the card and the groups represented, as opposed to managed elements used by other drug discount cards in the marketplace. He noted the guarantees are comparable but the Consortium drug discount card is open to all U.S. Food and Drug Administration (FDA)-approved drugs on the market based on its structure, while other cards only apply to certain medications or coupons available.

Vice Chair Bilbray-Axelrod and Mr. Douglass further discussed the ability for consumers to use multiple drug discount cards to save on prescriptions.

## **AGENDA ITEM V—OVERVIEW OF OPTIONS TO ESTABLISH INTER- AND INTRASTATE PRESCRIPTION DRUG PURCHASING COALITIONS FOR NEVADA**

Beth Slamowitz, Pharm.D., Senior Advisor on Pharmacy, Division of Health Care Financing and Policy (DHCFP), Department of Health and Human Services (DHHS), presented a high-level overview ([Agenda Item V](#)) detailing state models examining interstate and intrastate programs from a payer and purchaser perspective. Dr. Slamowitz discussed:

- Approaches taken by different states to constrain the growth of state government spending on prescription drugs, including Medicaid options;
- The difference between interstate versus intrastate models of state action;
- Examples of Nevada payers and purchasers of pharmaceuticals;
- The Minnesota Multistate Contracting Alliance for Pharmacy and its use by some Nevada government agencies;
- The interstate payer model including the Medicaid Supplemental Rebate Pool and the Northwest Prescription Drug Consortium; and
- The intrastate payer models used by California, Illinois, New Mexico, and Washington.

Dr. Slamowitz concluded the presentation by noting the importance of considering the following when evaluating the establishment of collaborative prescription drug program solutions: (1) ensuring all entities are on the same page and initiating conversations to work towards collective solutions; (2) knowing how each member of the purchasing or payer groups obtains prescription drugs; and (3) understanding how the best price provision of

the Medicaid drug rebate program limits the negotiating power of all payers and purchasers other than Medicaid.

Discussion ensued regarding the following:

- The advantages and opportunities associated with participating in an interstate model compared to an intrastate model;
- The role of PBMs and managed care organizations in the various models;
- Whether states with well established programs are seeing the savings maintain increasing drug costs;
- Adjustments needed to keep pace with the constantly evolving strategies of pharmaceutical companies; and
- Transparency associated with an all claims payer database.

### **AGENDA ITEM VI—OVERVIEW OF NEVADA MEDICAID’S RESPONSE TO THE COVID-19 PANDEMIC, INCLUDING FUTURE COVERAGE OF COVID-19 RELATED TREATMENT AND VACCINES**

Suzanne Bierman J.D., M.P.H., Administrator, DHCFP, DHHS, provided a presentation ([Agenda Item VI A](#)) outlining Nevada Medicaid’s response to COVID-19 on a global and local level. Ms. Bierman discussed the department’s efforts to: (1) leverage federal flexibility to ensure access to care and coverage and provide additional support for Nevada’s healthcare workforce; (2) apply for waivers and state plan amendments to allow for additional flexibility and waive certain requirements for Nevada’s Medicaid program eligibility; (3) expand telehealth resources, including Nevada Medicaid’s collaboration with the West Coast Compact; and (4) make changes to the home- and community-based services waiver programs.

Senator Hardy and Ms. Bierman discussed the increased caseload’s impact on costs for Nevada Medicaid during the COVID-19 pandemic, including the delayed claim processing resulting in deferred statistics.

Beth Slamowitz, previously identified, continued the presentation by discussing Nevada Medicaid Pharmacy’s response to the COVID-19 pandemic ([Agenda Item VI A-1](#)). Topics addressed included:

- Refill threshold decreases implemented by fee-for-service Medicaid;
- Diagnosis requirements for hydroxychloroquine, Plaquenil, and Chloroquine;
- Removal of prior authorization for certain compounds to allow for increased production of hand sanitizer;
- The addition of remdesivir to the drug exclusion list in order to ensure its proper use according to the FDA’s Emergency Use Authorization;
- System changes DHHS is prepared to implement in order to ensure accessibility for future COVID-19 vaccines; and
- Testing and specimen collection.

Chair Cancela and Dr. Slamowitz discussed possible federal legislation to prevent future price gouging of COVID-19 vaccines. Dr. Slamowitz noted the constant evolution of the pandemic and indicated she is tracking discussions on future federal response to treatments and vaccinations, including the fair and appropriate allocation of resources at the federal level.

Subsequent to the meeting, Ms. Bierman provided a memorandum that contained web links to information regarding COVID-19 from FAIR Health Inc. and the Kaiser Family Foundation ([Agenda Item VI A-2](#)).

## **AGENDA ITEM VII—PRESENTATION ON THE INTERACTION BETWEEN FEDERAL AND STATE LAWS CONCERNING THE PRICING OF PRESCRIPTION DRUGS**

Eric W. Robbins, previously identified, shared a presentation ([Agenda Item VII](#)) discussing situations where federal law may or may not be an obstacle to state efforts to regulate prescription drug pricing. Mr. Robbins discussed:

- An overview of the federal court system;
- The minimum standards, requirements, and preemption clause of the [Employee Retirement Income Security Act \(ERISA\) of 1974](#) (93<sup>rd</sup> Congress); and
- The “[dormant](#)” [Commerce Clause](#) (DCC) of Article 1, Section 8, Clause 3 of the *U.S. Constitution* as it relates to direct and indirect regulation of pricing.

Senator Hardy and Mr. Robbins discussed the DCC as it relates to the cost of products imported and exported between states. Mr. Robbins elaborated and stated the clause would prohibit a state from enacting a law requiring the lowest price for that specific product. He noted the purpose of the DCC does not establish product pricing but rather regulates the laws a state could pass regarding the pricing of goods.

Mr. Robbins continued his presentation by discussing:

- Patent law’s interaction with prescription drug legislation, patent thickets, and reverse payment settlements;
- Trade secrets as they relate to misappropriation, the [Defend Trade Secrets Act of 2016](#) (114<sup>th</sup> Congress), transparency laws, disclosure, and the [Takings Clause](#) of the Fifth Amendment to the *U.S. Constitution*;
- Case law related to prescription drugs and the First Amendment to the *U.S. Constitution* and;
- An overview of [Senate Bill 539](#) (2017), a lawsuit filed by the Pharmaceutical Research and Manufacturers of America, and the resulting adoption of [LCB File R042-18](#) by DHHS.

## **AGENDA ITEM VIII—PRESENTATION AND DISCUSSION REGARDING POLICY OPTIONS PRESENTED AND SUBMITTED TO THE COMMITTEE**

Patrick B. Ashton, previously identified, presented a memorandum ([Agenda Item VIII](#)) outlining nine policy proposals submitted to the Committee by stakeholders and members of the public.

Mr. Ashton discussed the first policy option recommending the authorization of DHHS to use [alternative payment models](#) with pharmaceutical manufacturers. He noted the policy option ensures that state plans, such as Medicaid or the Public Employees' Benefit Program (PEBP), may use these models. The recommendation also provides that private insurers should be authorized to use the models as well. Mr. Ashton suggested the Committee would need to verify the alternative payment model does not conflict with any existing laws or regulations.

Mr. Ashton continued with the second policy option proposing the establishment of a [prescription drug affordability board](#). He explained the board would have the authority to review information from prescription drug manufacturers regarding drug costs and set a statewide payment limit, or upper limits, on certain drugs, which would improve patient access.

Eric W. Robbins, previously identified, commented that the composition of the board could implicate some issues discussed earlier in the meeting. He suggested if the upper payment limit is prescribed for all payers in Nevada, including private payers, there may be the potential for litigation. However, if the upper payment limits apply only to state entities, such as Medicaid or PEBP, the state would be acting as a market participant and the litigation potential would be less.

Vice Chair Bilbray-Axelrod inquired whether larger providers would benefit from the establishment of a prescription drug affordability board or whether they would be ineligible.

Mr. Robbins noted larger providers would not receive benefits if the upper payment limits only apply to government plans; he reiterated the litigation potential for upper payment limits applying to private payers. Mr. Robbins said some larger providers are subject to the ERISA preemption issues and suggested a more detailed examination of those issues.

Senator Hardy requested clarification on the percentage of plans the ERISA preemption clause would affect.

Mr. Robbins noted the state and governmental plans would be affected; however, individual plans are not subject to ERISA. For example, he indicated if people purchase their own health insurance independent of their employers, it would not be subject to ERISA, which the state can regulate. Mr. Robbins further elaborated that according to the United States Census Bureau, 55 percent of the population is covered by employer plans and the majority of those are going to be ERISA plans.

Vice Chair Bilbray-Axelrod inquired whether the Census Bureau statistics are accurate due to the COVID-19 pandemic and people purchasing insurance from the Silver State Health Insurance Exchange. She also inquired whether individual plans purchased off the Exchange are subject to ERISA as well.

Mr. Robbins responded that individual plans purchased off the Exchange would not be subject to ERISA because they are not employer plans, and he said a survey of federal law could be done to ensure there are no additional issues.

Mr. Ashton discussed the third proposal regarding the establishment of an [intrastate and/or interstate purchasing coalition](#). He clarified that an intrastate purchasing coalition does not need to be established prior to an interstate purchasing coalition. For example, Medicaid could join an interstate purchasing coalition first, and then subsequently, others might join.

Senator Hardy commented that if the state chooses to participate in an interstate coalition, this would save money by decreasing the silos that exist in the intrastate system.

Mr. Ashton continued his presentation with the fourth recommendation, which suggests establishing [caps on consumer copays and the maximum costs of prescription drugs](#). He noted other states have established caps on certain drugs and reminded the Committee of concerns expressed by the Culinary Health Fund that creating a cap without lowering the drug price may create price gouging.

Mr. Ashton proceeded with the fifth policy option addressing the various [cost sharing options](#) including the use of coupons towards a patient's deductible, coverage of certain preventative prescription drugs before a patient's deductible is met, and health plans to include certain deductible and copay features within its drug coverage.

Mr. Ashton indicated the sixth recommendation applies to the [drug donation program](#) by enhancing the definition of packaging set forth in [Nevada Revised Statutes 453B.080](#) to include vials.

Mr. Ashton shared the seventh policy suggestion dealing with [formularies for Medicaid, Medicare, and other nonstate plans](#). He noted the accelerated placement of newly FDA-approved generic drugs on formularies and the placement of certain generic drugs on a low-tier formulary would increase affordability and help lower the costs of certain prescription drugs.

Mr. Ashton outlined the proposals of the eighth recommendation related to [PBMs](#). He reminded the Committee of Mr. Robbins's presentation discussing ERISA preemption issues and pending determinations by the Supreme Court. Mr. Ashton conveyed the following comments by the Culinary Health Fund: (1) rebates should be fully passed down to health plans in order to lower the overall health care costs for patients; (2) incentives for drug companies to raise list prices should be removed; and (3) PBMs should prioritize higher cost drugs since a portion of their revenue comes from rebates.

Mr. Robbins recognized the inconsistency associated with PBM regulations and suggested the option of a bill amendment during session to exempt the ERISA plans.

Mr. Ashton concluded his presentation by discussing the ninth recommendation related to [transparency and utilization management practices](#), which requires disclosure of all negotiated drug rebates, costs, and prices in all contracts throughout the entire drug market chain.

Mr. Robbins commented on the legalities of disclosing trade secrets and suggested a provision that allows companies to protect their trade secrets to prevent an unfavorable ruling by the courts.

Mr. Ashton outlined the remaining policy proposals associated with transparency and utilization management practices. He indicated the recommendation addressing prior authorization and step therapy may create a bureaucratic delay in process by establishing barriers to accessing potentially life-saving medications and noted the proposal is intended to create standard exceptions to ensure alignment across insurers.

## **AGENDA ITEM IX—PUBLIC COMMENT**

Ingrid Lopez, Nevada resident, shared testimony on behalf of Shaquelle Franklin. Ms. Franklin’s remarks detailed her experiences of living with asthma and the necessary medication. She indicated she pays \$120 a year for her inhaler, which is manageable, but acknowledged the burden of others trying to afford the same medication.

Maya Holmes, previously identified, submitted written remarks further commenting on PBM laws and the [Defend Trade Secrets Act of 2016](#) of the 114<sup>th</sup> Congress ([Agenda Item IX A](#)).

Subsequent to the meeting, the Nevada Pharmacy Association provided the following materials related to PBMs: written remarks ([Agenda Item IX B](#)), links to various articles ([Agenda Item IX B-1](#)), and a fact sheet ([Agenda Item IX B-2](#)).

**AGENDA ITEM X—ADJOURNMENT**

There being no further business to come before the Committee, the meeting was adjourned at 1:18 p.m.

Respectfully submitted,

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Crystal Rowe  
Research Policy Assistant

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Patrick B. Ashton  
Senior Policy Analyst

APPROVED BY:

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Senator Yvanna D. Cancela, Chair

Date: \_\_\_\_\_

## MEETING MATERIALS

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
<a href="#">Agenda Item II A</a>	Vivian Leal, multiple sclerosis patient and health care team lead, Indivisible Northern Nevada	Written remarks
<a href="#">Agenda Item II B</a>	Khanh Pham, President, Nevada Pharmacy Association	Written remarks
<a href="#">Agenda Item II C</a>	Maya Holmes, Healthcare Research Manager, Culinary Health Fund	Written remarks
<a href="#">Agenda Item II D</a>	David Peightal, Director, Nevada Pharmacy Association	Written remarks
<a href="#">Agenda Item IV</a>	Trevor Douglass, D.C., M.P.H., Oregon Prescription Drug Program and Pharmacy Purchasing Director, Oregon Health Authority; and William Hayes, Director of Pharmacy, Washington State Department of Corrections, and member of the Northwest Prescription Drug Consortium Steering Committee	Microsoft PowerPoint presentation
<a href="#">Agenda Item V</a>	Beth Slamowitz, Pharm.D., Senior Advisor on Pharmacy, Division of Health Care Financing and Policy (DHCFP), Department of Health and Human Services (DHHS)	Microsoft PowerPoint presentation
<a href="#">Agenda Item VI A</a>	Suzanne Bierman J.D., M.P.H., Administrator, DHCFP, DHHS	Microsoft PowerPoint presentation
<a href="#">Agenda Item VI A-1</a>	Beth Slamowitz, Pharm.D., Senior Advisor on Pharmacy, DHCFP, DHHS	Memorandum

<b>AGENDA ITEM</b>	<b>PRESENTER/ENTITY</b>	<b>DESCRIPTION</b>
<a href="#">Agenda Item VI A-2</a>	Suzanne Bierman J.D., M.P.H., Administrator, DHCFP, DHHS	Memorandum
<a href="#">Agenda Item VII</a>	Eric W. Robbins, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau (LCB)	Microsoft PowerPoint presentation
<a href="#">Agenda Item VIII</a>	Patrick B. Ashton, Senior Policy Analyst, Research Division, LCB	Memorandum
<a href="#">Agenda Item IX A</a>	Maya Holmes, Healthcare Research Manager, Culinary Health Fund	Written remarks
<a href="#">Agenda Item IX B</a>	Nevada Pharmacy Association	Written remarks
<a href="#">Agenda Item IX B-1</a>	Nevada Pharmacy Association	Article links
<a href="#">Agenda Item IX B-2</a>	Nevada Pharmacy Association	Fact Sheet

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