



EXPRESS SCRIPTS®

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Ms. Jennifer Patterson  
Health Policy Legal Counsel  
New Hampshire Insurance Department  
21 S. Fruit St., Suite 14  
Concord, NH 03301

*Re: Proposed Insurance Department Rule 2704: Prescription Prices for Pharmacists and Pharmacies*

Dear Ms. Patterson:

Thank you for the opportunity to provide feedback on the regulations proposed in the above referenced rule. On behalf of the many patients and payors we serve in New Hampshire, Express Scripts is concerned with the proposed definition of “usual and customary price,” and its effect on how prescriptions are paid by patients.

As the nation’s largest pharmacy benefit manager serving more than 85 million Americans, Express Scripts assists its clients with the provision and payment of prescription drugs dispensed by pharmacies to patients in New Hampshire. In doing so, we regularly reference “usual and customary price” as a pharmacy benefits industry term of art. It is widely accepted to be known as the cash price a pharmacy offers to a patient, regardless of whether the patient is using an insured benefit, or whether the pharmacy participates in the insurer’s pharmacy network. As a result, we urge the Department to leave the term undefined in this rule and instead defer to the state’s rule on common usage of the terms:

Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning. (New Hampshire Statutes, Section 21:2)

If the Department insists that a definition is necessary, then we respectfully recommend the definition provided by the Centers for Medicare & Medicaid Services, and used generally by the industry as an acceptable, although less favorable, alternative:

Usual and customary (U&C) price means the price that an out-of-network pharmacy or a physician's office charges a customer who does not have any form of prescription drug coverage for a covered Part D drug. (CMS Definition, 42 C.F.R. 423.100)

We respectfully ask the Department leave this term undefined, or if defer to the CMS definition.

Very truly yours,

*Heather Cascone*

cc: Curtis Barry, The Dupont Group