Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures, the people in them, the policies, process, and politics that shape them. I am your host, Ed Smith.

IJ: What we were finding was that these savings which were actually intended for the customer at the pharmacy were being pocketed by the supply chain.

Ed: That was Representative Iman Jodeh of Colorado, one of my guests on this podcast, the fourth in the series looking at efforts in state legislatures related to prescription drug costs. I sat down with Representative Jodeh to talk about legislation passed in her state requiring pharmaceutical benefit managers and health plans to demonstrate how rebates collected from manufacturers are used to reduce health insurance premiums. The legislation also requires certain state regulated health plans to implement copayment only structures for all cost sharing tiers in their drug formularies.

Also joining for this episode is Colleen Becker of NCSL. She tracks legislation related to prescription drug costs and was instrumental in putting this series of podcasts together. She talked about the different types of legislation passed in 22 and what you can expect to see coming out of legislatures on this issue in the future. Here’s our discussion, starting with Representative Jodeh.

Representative Jodeh, welcome to the podcast.

IJ: Thank you for having me.
Ed: Well thanks so much for taking the time to be on this show. We are going to talk today about legislation you sponsored in Colorado to help reduce the costs of prescription drugs to consumers. Now I’ve looked at this legislation. It’s got a lot of provisions in it. So, I’m going to ask you to briefly tell everybody about that bill and how it might reduce out of pocket costs for your constituents.

IJ: So, 1370 is really intended on making health care more dependable and affordable for Coloradans, which I think is something we all want and need to work for. And so 1370 really had four main provisions and goals. So, the first thing is that it set out to reduce prescription drug costs and making sure that those rebates that pharmaceutical companies advertise are actually getting passed onto the consumer. Because what we were finding was that these savings which were actually intended for the customer at the pharmacy counter were being pocketed by the supply change whether it was insurance companies or pharmacy benefit managers or PBM’s. We really wanted to put a stop to this and make sure that prescription drugs were affordable.

So the other thing that the bill will do is that it’s cuts costs and ensures that there’s better access to medications and preventing insurance companies from dropping those medications in the middle of their plan year. So for example, if there was a medication that that patient thought they were covered for, we were finding that sometimes those medications would be dropped and that patient wouldn’t even have a notice of that being the case. So on that note, it actually kind of applies to doctors as well. So it requires at least 25% of plans have a set dollar amount of copays rather than these like unpredictable percentage-based coinsurance payments. And so what we were also finding just like with their prescription drugs was that people would make an appointment with a doctor that they thought was in network only to find out that they were not in network; they were dropped. And then they would get a surprise bill from that provider. So you know we really wanted to make sure we streamlined this process and people really had full transparency of what their plan actually covered and that wouldn’t change in the middle of their plan year.

Another thing and the final point that it does which is you know is something that is personal to me, I live with epilepsy and I know this happens a lot with neurologists having to go through prescribing step therapy. And so step therapy is essentially when doctors know that drug X is going to work for their patient, but insurance companies are making them go for the cheapest drug and then the cheaper drug before they get to the most expensive drug which again is the drug that actually works. And so the bill says listen sometimes step therapy is actually needed. The doc and the patient need to go through different medications to find out what works for them. But if the doctor knows what’s going to work for their patient, they should be able to prescribe the drug that
they need which ultimately saves that patent from going through this process every single time. And it could potentially save their lives. What we did was create an exemption process for docs to apply to to say you know what my patient doesn’t have to go through step therapy. Let’s change that and let me go straight to the drug that I know will work for them. They go through a short process. It’s approved and then we can save that doctor and that patient time and potentially pain that they would have to endure otherwise.

(TM): 05:33

Ed: Well those are some excellent points. This is the fourth podcast I’ve done this year about trying to cut prescription drug costs and I’ve spoken with legislators all over the country and I’ve just learned a couple of new things right there. Now as I understand it, your bill also includes a provision that would allow the state department of health to use it’s All Payer’s Claim Database, an APCD, to connect an analysis of rebates received by carriers along the lines of what you were just talking about. Can you tell us what an APCD is? Also, how that information collected may help guide future policy decisions.

IJ: Yeah absolutely. So, APCD is the Colorado All Payers Claim Database. And it’s a comprehensive database of health care claims that covers most Coloradan’s health care plans and their claims. So it’s really meant to shed light on the health care costs that bring much needed transparency to an unfortunate broken system. And it’s managed by a Colorado nonprofit that provides really helpful insightful data for policymakers like myself and the general public to make sure that we are making informed decisions and that we know what we are covered with.

Ed: In talking with other legislators about regulation related to drug costs, I know to put it mildly there are offering differences of opinion whether it is with the industry or maybe with other stakeholders, other legislators, and I’m wondering what sort of challenges or pitfalls you faced in getting this legislation passed and how you handled that – how you navigated that.

IJ: You know this isn’t my first rodeo in health care policy and I’m incredibly proud of the changes that I’ve partnered with other legislators on to really have a shift in health care policy and making sure that health care is a human right that is honored and realized. You know in my first term, I passed the Colorado option with Representative Roberts, which was the largest health care bill in Colorado history. I passed medical debt forgiveness bill, which is I think something a lot of Americans are being crippled. There was this bill as well. Really making sure that people had access to affordable medications. You know when we think about changing the health care system, it can seem really. And there are major pitfalls when we talk about changing health care and
most of all going against for profits stakeholders, which is you know in my mind one of the biggest hurdles to conquer when we are doing stakeholdering. But that said, even when we knew we would be out lobbied, we also stood behind the fact that this was common sense policy and solutions to improve the health care system and access for the affordability we all need. The biggest strategy that I always lean on and that we did with this bill was building a very big strong coalition. And that coalition for this bill was made up of 60 organizations from patient advocacy groups and providers and businesses and organizations that were all directly impacted by this whether currently or in the past and wanted to see that change. And so, building that robust coalition and really an army of amazing volunteers with lived experience that were related to barriers in health care helped us really overcome the challenges that we were facing while also really influencing the votes of our members because of those lived experiences.

Ed: Well, that’s very interesting cause I was going to ask you about lessons learned sort of thing. NCSL, of course, and this broadcast always likes to touch on with legislators after you’ve been through this or are continuing to be in the middle of a certain type of legislation. So, one lesson learned is the value of coalition building. Are there other lessons learned that you would share with people around the country who might want to pursue similar legislation?

IJ: Absolutely. You know we have to be unapologetic about furthering people’s human rights through policy. And I know that sometimes when we think of human rights it can be on an international scale, but as legislators we also have an obligation through our positions to make sure that our constituents and their human rights are being protected. And so when I am in that building, I am incredibly unapologetic about protecting the needs of Coloradans and uplifting their lived experiences and making sure that the members who will be voting on this policy not only recognize, but respect that lived experience. And so by way of that, that is also at the core of what I do is making sure that we are focusing on common sense policy solutions even when you are going up against super high-powered industry. And so, you know like you said and like I said, you cannot ever underestimate the importance of a robust coalition. And having that coalition behind you is not only what keeps you going and motivates you when things are going really hard and you know you’re sometimes losing faith, but when you sit down and you are grounded with this coalition and you think about what they’ve had to go through, it uplifts you. It uplifts the process and it makes you want to kind of charge through and make sure you get it across the finish line. And I really want to thank NCSL for being you know very helpful with the resources that I’ve needed in my bill process and other legislators that I know we’ve leaned on to make sure that we are not reinventing the wheel. We are leaning on precedents maybe from around the country, but also understanding what could be a solution that hasn’t been done before and that we are setting the precedents for other states in common sense policy.
Ed: Well Representative, thank you so much for sharing your experience there in Colorado and your time with us. Take care.

IJ: Thank you so much for having me.

Ed: I’ll be right back after this with Colleen Becker from NCSL.

(TM): 12:10 music/advertisement

Colleen, welcome back to the podcast.

CB: Thanks Ed. I’m glad to be here.

Ed: This is the fourth podcast we’ve done talking about state legislative efforts to control prescription drug costs. There’s certainly been a lot of talk about the high cost of prescription drugs over the years. And I wonder if you can just talk a little bit about when legislators at the state level first got involved in looking at this issue and considering what changes they can make at the state level.

CB: You know Ed, as you and I both know, prescription drug access and affordability has been on the radar of state legislators for many, many years so this topic itself is nothing new. However, how lawmakers have chosen to address those issues has really evolved over time.

Ed: Well I’ve been impressed this past year in talking with legislators around the country at the level of complexity involved in trying to both just understand prescription drug costs let along trying to come up with legislation that would regulate it. So, I wonder if you, given the amount of time you’ve spent looking at this, I wonder if you could talk a little bit about what actions states took during 2022.

CB: Sure. So I’m going to do a quick plug for the database that we have. So NCSL has a public facing database called the Prescription Drug Bill Tracking Database and it is where we track both introduced and inactive legislation in about a dozen different topic areas. In 2022, we tracked over 430 bills and 45 states, DC and Puerto Rico. And of those, 68 bills in 27 states passed. So from those numbers you can probably you know takeaway that there was wide variety and how those bills addressed different issues. So with that said, the few common themes emerged and for the purposes of this conversation, we can very loosely group them into a couple of buckets. So those that affect drug prices. Policies that impact drug costs either for consumers or state budgets. And then this one
bucket that crosses both prices and costs and that is reforms for Pharmacy Benefit Managers or PBMs.

Ed: I’ve been impressed by the bipartisan nature of this. There seem to be Republicans and Democrats all across the country all of whom are interested in addressing this issue. And they’ve told me in these podcasts how important it is to their constituents. I wonder if you could talk a little bit about those categories you just mentioned and how those played out in actual legislation.

CB: Sure. Of course. So first I’m going to dive into the bucket that I mentioned that kind of addressed prices and policies to address high drug prices often lie with the federal government. But there have been some strategies pursued at the state level so for instance many states have explored price and cost transparency where data is required from various supply chain actors such as manufacturers, PBMs and health plans. Over a dozen states implemented some sort of or have implemented some sort of data collection effort. We’ve also seen interest in prescription drug affordability boards which are also known as PDABs and that’s where an independent non-governmental body is tasked with identifying and evaluating high-cost drugs in the state. The next bucket of strategies we’ve seen lawmakers take action is PBM reform and I think many of your listeners already know what that acronym means, but quick definition for those that may not it’s Pharmacy Benefit Managers and they are third-party administrators of prescription drug benefits for a number of payers such as health plans, large employers. That’s just naming a few. In the past few years, we’ve been tracking a lot of legislation around PBM reform. And in fact, about 30 to 40% of both introduced and in active legislation we have tracked in the database focused on PBMs. Again lots of variations in the approaches that states have taken. Some decided to pass legislation to require PBMs to either register or obtain licensure in the state. Some banned the use of gag clauses in PBM contracts which allow pharmacists to tell patients about lower cost options at the pharmacy counter. And others explored using a reverse action process and that’s to get the best deal in their state employee health plan or PBM contracts. A little explainer on that as well: In a reverse action, PBMs compete by submitting offers anonymously through an online portal and the lowest offer is awarded the contract. And I think reverse actions are a nice segue into the last bucket of policies I’ll mention which are those that aim to reduce costs. So for state costs and in additional to PBM reforms, alternative payment models or value based or outcomes-based payment models are one option states are exploring to manage prescription drug costs in their Medicaid budgets. And then also entering into both purchasing pools is another type of strategy being pursued.

On the consumer end, restricting the use of copay adjustment programs. That’s receiving considerable legislative interest. And those are programs that restrict the use
of a manufacturer’s copay coupon from counting toward a patient’s annual out of pocket maximum like a deductible. At least 15 states and Puerta Rico now have laws on the books that require payments made on behalf of the patient be applied to their annual out of pocket cost sharing. Speaking of cost sharing, I feel I would be remiss if I didn’t also mention that how much a person pays for their monthly supply of insulin or how much they pay for their supplies is still a large concern for our members.

(TM): 18:26

Ed: Yeah I think the insulin issue was such a big headline at the federal level this year as well. There were insulin changes for Medicare recipients as I recall, but I don’t think there was an across-the-board cap on insulin payments. But what was so interesting in talking with legislators is there are many, many states where there is some legislation that affects insulin and that seems to be maybe that will be an issue that will be ongoing. Speaking of which, I don’t think there was a single person who when I asked them well, are you done with prescription drug legislation in your state, didn’t say absolutely not. We’ve just gotten started. So why don’t you talk a little bit about that. What’s coming up in 2023? What do you think in the years ahead is going to be the trend in states in terms of looking at this issue?

CB: Well you just kind of touched on it a little bit, but I think a lot of folks are wondering how the prescription drug pricing provisions and the Inflation Reduction Act might affect the prescription drug market. A lot of attention is focused on the provision allowing the federal government to negotiate prices paid in Medicare. And then as you just mentioned, those caps on insulin in the Medicare market as well. But we are not going to see how that begins to play out until 2026. The first provisions that take effect will be the rebates that manufacturers will have to pay back to Medicare. Prices rise faster than inflation. And although those are Medicaid focused policies, lots of eyes are going to be watching to see if and how they may impact the broader prescription drug market. But to be honest Ed, predicting what legislators might or might not do is something I’m not very good at. But where other areas of health policy have been divisive and as I’ve just highlighted and as you mentioned also, many prescription drug policies received bipartisan support. And with the elections now in the rearview and the inflex of new lawmakers coming in with a host of new priorities, I expect we will see some of the same strategies I mentioned percolate along with some new ideas so lots to see.

Ed: Well Colleen, thank you so much for helping me this year to put together this series. It’s such an important and complicated issue that I think that we are able to shed at least a little light on it. And I have no doubt that down the road we will be looking at this issue again. Thanks very much. Take care.
CB: Thanks Ed. Have a good one.

Ed: I’ve been talking with Representative Iman Jodeh of Colorado and Colleen Becker from NCSL about state legislative efforts to address prescription drug costs. Thanks for listening. You can check out all the podcasts from the National Conference of State Legislatures by searching for NCSL podcasts wherever you get your podcasts. Tim Storey, NCSL’s CEO, hosts “Legislatures: The Inside Story” where he focuses on leadership and legislatures. On our new podcast “Across the Aisle” host Kelley Griffin tells stories about bipartisanship in action. Also check out our special series “Building Democracy on the colorful history of legislatures.

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