DAWN D. GILE
Legislative District 33
Anne Arundel County

Finance Committee

Chair

Anne Arundel County
Senate Delegation

Miller Senate Office Building
11 Bladen Street, Suite 3 East
Annapolis, Maryland 21401
410-841-3568 · 301-858-3568
800-492-7122 *Ext.* 3568
Dawn.Gile@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of Senate Bill 388

Prescription Drug Affordability Board – Authority for Upper Payment Limits and Funding

Lowering Prescription Drug Costs for All Marylanders Act of 2024

Madam Chair, Vice Chair Klausmeier, and fellow members of the Senate Finance Committee:

The skyrocketing cost of prescription drugs remains a growing issue for Marylanders across our state, particularly as we continue to reckon with the lasting health and economic impacts of the COVID-19 pandemic. While there has been attention to this issue on both the state and federal level, Marylanders continue to struggle to afford the medicines they need, with one in three residents reporting that they have skipped a dose, rationed medication, or left a prescription at the pharmacy counter due to cost.[i] Even those who are able to afford their medications are left paying a hidden "prescription drug tax," as these excessive prices impact us all. Whether it's through our out-of-pocket costs, our insurance premiums, or our taxpayer dollars, we are all hurt by the high cost of prescription drugs. Senate Bill 388, which would expand the authority of our Prescription Drug Affordability Board to address drug costs for *all* Marylanders, is an opportunity to provide direct relief to our residents and to ensure much-needed cost containment for our state.

What is the issue?

Prescription drug prices are increasingly unaffordable, meaning lifesaving medications sit out of reach for patients and elevate costs across the health care system. With little in the form of existing regulation, the prescription drug pricing system operates in dysfunction and complexity, prioritizing profits over people. Prices regularly rise faster than the rate of inflation, with much of our increased spending coming from price hikes on existing medications, rather than on the introduction of innovative products.[ii] While pharmaceutical corporations claim that these prices are needed to offset the costs of research and development, a recent report from Public Citizen shows that pharmaceutical manufacturers routinely invest significantly more in self-enriching activities than on innovation. Notably, the manufacturers of the ten drugs chosen for review under the Medicare negotiation provisions of the Inflation Reduction Act spent $22 billion more on stock buybacks, executive compensation, and advertising than they did on research and development expenses in 2022 alone.[iii]

With some new drugs coming to market with multi-million-dollar price-tags per single use, it is difficult to see how anyone could call these products affordable.[iv] While it is true that this is not necessarily the price that a patient would pay, it is still cause for public concern. List prices are the basis of what

pharmacies and patients pay, but just as importantly, these exorbitant prices only serve to drive up the costs of our insurance premiums and strain our state and local government budgets. The Maryland Health Benefit Exchange reports that prescription drugs represented nearly thirty percent of the total spending for privately insured markets in Maryland in 2020. Similar numbers were shared by Chet Burrell, former CEO of CareFirst BlueCross BlueShield in 2017, indicating this is a long-standing concern and one that is felt throughout the health insurance market. Specialty drugs are of issue, accounting for nearly 50% of CareFirst's total drug spending, as reported in 2020.[v] This is significant, as specialty drugs represent a growing share of the newly approved medications coming to market. These products are often priced much higher than traditional prescription drugs, increasing the burden to our health plans, government and employer budgets, and patients directly.[vi] Even when out-of-pocket costs are relatively manageable, we are all left paying for these expensive prescription drugs, regardless of whether we personally use them.

What has been done so far?

In 2019, under the direction of this committee, the Maryland General Assembly created the nation's first Prescription Drug Affordability Board.[vii] The Board, which is modeled after state public utility or service commissions, is designed to serve as a watchdog for Maryland and our residents, examining high-cost drugs and determining fair, affordable rates for these products. Despite years of obstruction following the law's passage, the Board has done considerable work to build the necessary infrastructure for a novel state agency, including establishing an independent funding source which has allowed the Board to begin its work.

The prescription drug supply chain is crowded and complicated, with little transparency as to how costs are determined. Importantly, the Board is tasked with reviewing the entirety of the supply chain, ensuring that its decisions balance the need for consumer affordability with the revenue needs of suppliers. Currently, our Board has been granted the authority to address the cost of prescription drugs for state and local governments, pending the approval of the Legislative Policy Committee. We have heard from several local leaders that prescription drug costs present a significant challenge to their budgets, with the cost of employees' prescription drug coverage limiting the other public services that can be provided.[viii] This initial work of the Board will be critical in addressing this issue, alleviating the burden on our taxpayers.

Separate from our state's Prescription Drug Affordability Board, but nearly as important, is the 2022 passage of the Inflation Reduction Act (IRA). Under the leadership of President Joe Biden and Vice President Kamala Harris, the IRA represents the most significant action that Congress has taken to address the cost of prescription drugs, granting Medicare the power to negotiate a maximum fair price for selected medications, in addition to other measures designed to contain costs for Medicare recipients. This law will provide real relief to the one million Marylanders enrolled in Medicare and can serve as a blueprint for our Board's work, as well.

What still needs to be accomplished?

While the Board's initial work to address costs for state and local government entities is commendable, it is not a comprehensive solution to the issue at hand. The legislation as-introduced in 2019, and again here today, envisions a broader authority for the Prescription Drug Affordability Board, allowing it to establish a maximum statewide rate—or upper payment limit— that *all* Marylanders and supply chain entities could pay for selected high-cost medications. Though an upper payment limit seems novel, rate setting is ubiquitous in health care and for prescription drug products. Today, each drug on the market is reimbursed at hundreds of different payment rates across the country; allowing our Board to establish a statewide rate utilizes existing practices to help ensure that all Marylanders have access to the prescription drugs they need.

Much of the work that the Prescription Drug Affordability Board has already done to establish a process for cost reviews and determinations will translate easily to a statewide upper payment limit mechanism. When reviewing a prescription drug, the Board will consider a broad range of economic factors, including allowing pharmaceutical manufacturers to justify existing drug prices. When an appropriate rate is determined following a review of public information, manufacturer-reported data, and other data sources, the upper payment limit will apply to all purchasers and payor reimbursements in Maryland, eliminating the need for the rebate process and ensuring that lower costs benefit consumers.

Why now?

While I applaud our Prescription Drug Affordability Board for its work so far, the truth remains that it can currently do little to help Maryland patients directly. Too many of our families and neighbors have been faced with the impossible decision of choosing between the medication they need and their economic stability. Community organizations and leaders have indicated this remains a is a top issue for their members. Groups like the NAACP, AARP, AFSME, 1199 SEIU, the Legislative Black Caucus and the 450+ member Health Care for All! Coalition have all spoken to the importance of addressing high-cost drugs. Collectively, they are asking the Maryland General Assembly to do more.

As mentioned before, many of the cost review and rate determination processes that the Board has already established will operate seamlessly with a statewide upper payment limit. With these initial state and local government rates likely to go into effect in the next PBM contracting period in 2025, the state should be able to see immediate projected savings from this first step. By granting the Board this expanded authority with the requirement that it again have its plan approved by the Legislative Policy Committee, we are ensuring that the state is well-positioned to act swiftly to address costs more broadly following completion of this pilot phase, rather than forcing Maryland patients to wait yet another year to see relief. By expanding the Board's authority Maryland can join the ranks of Colorado, Minnesota, and Washington states, which have all created Prescription Drug Affordability Boards with full statewide upper payment limit authority.

This session, we have an opportunity to help Marylanders struggling to afford the medications they need. It is time that we insist that patients are put over profits, because drugs don't work if people can't afford them. I respectfully request a favorable report on Senate Bill 388.

What you will hear from opposition

The drug corporations claim that upper payment limits on high drug costs will hinder their ability to fund necessary drug innovation. While drug corporations claim to need these staggering prices to fund research on new prescription drugs, they do not actively prioritize the effort now. In short, if pharmaceutical manufacturers need to trim their budgets, there are several areas they could pull from before research and innovation.

The fact is, they spend billions more on self-enriching activities like stock buybacks, executive compensation, and advertising than they do on research and development.[ix] As a new Report by Public Citizen entitled "Patients over Profits" shows, the corporations which produced the ten drugs chosen by the federal government for Medicare price negotiation under the Inflation Reduction Act spent $22 billion more on advertising and self-enriching expenditures such as stock buy backs and dividends than on research. They also spend considerable amounts of their money trying to influence policy. The Public Citizen report shows 13 of the nation's largest patient advocacy organizations received a combined total of $266 million between 2010 and 2022—notably, many of these same organizations have stayed silent or opposed drug cost containment efforts.[x] In addition, PhRMA donated money directly to political organizations working against federal drug pricing reform, including millions to GOP-linked American Action Network, and over $500,000 to the Heritage Foundation, a right-wing fringe group that has fought against voter access and actively denies the results of the 2020 election.[xixii] It is also true that increased drug spending is largely due to price hikes on existing medications rather than the introduction of innovative products.[xiii] Finally, federal taxpayer dollars already subsidize drug research and development, a fact that is underreported in patent filings.[xiv] In fact, the NIH is the largest public funder of biomedical research and development, contributing billions (97 for basic research, 28 for clinical trials, and 9 for workforce development) between 2017 and 2021.[xv] Every single new prescription drug that came to market between 2010 and 2020 had origins in publicly funded research.[xvi] That is why Senator Chris Van Hollen has introduced the We Paid Act to require that drug corporations whose research on a drug is largely funded by the federal government have to go through a review process before they can charge exorbitant prices for that drug.

The opposition also claims that PDABs can hurt the development of orphan drugs. Prescription Drug Affordability Board must have the ability to review and set upper payment limits on products with orphan drug designation to be truly effective. While an orphan drug is a medication intended to treat a rare condition (one that has a patient population under 200,000), the financial incentives of this designation have resulted in drug companies increasingly seeking this status for existing drugs on the market that are used to treat common diseases. As a result, more than half of orphan drug spending is for non-orphan conditions.[xvii] Seven of the top ten selling drugs have orphan drug designation.[xviii] Due to generous federal government benefits and protections, research has shown that orphan drugs have less investment risk and are less costly to develop due to expedited approval reviews, shorter trials, and proxy outcomes.

Another argument the opposition makes is that upper payment limits are unconstitutional. While it is true that Maryland's 2017 anti-price gouging law regarding generic drugs was deemed unconstitutional in the Fourth Circuit, this approach is markedly different from that law. Legal analysis from national firms and Maryland's Attorney General argue that upper payment limits are constitutional. The threat of litigation from PhRMA and the industry cannot keep us from taking meaningful action for our state's

residents. As one of the most well-financed sectors in the world, the industry frequently uses the threat of legal challenges to try to quiet regulation attempts.

The threat of retribution by drug manufacturers leaving the state should not be taken seriously, as many manufacturers have chosen to locate in Maryland for a multitude of reasons, like proximity to NIH and the FDA. Additionally, pharmaceutical corporations have headquarters and operations in countries with rate setting authority, and it is unlikely that groups will spend unnecessary resources to move manufacturing when Prescription Drug Affordability Boards have been established and are being considered in multiple states.

Not surprisingly drug manufactures also try to shift the blame for high drug costs to others in the supply chain like PBMs. A PDAB is uniquely equipped to address this issue, as it is designed to look at the *entirety* of the supply chain when determining upper payment limits. If fault truly lies with one specific party, a UPL will solve this issue by effectively eliminating the rebate determination process that occurs behinds closed doors. Giving our PDAB full upper payment limit authority will allow it to protect Marylanders from high-cost drugs.

While some drug manufacturers use the threat of not selling a drug with an upper payment limit as blackmail in the face of any proposed regulation, it is incredibly unlikely that they would refuse to sell in a state simply due to an upper payment limit on a product. First, pharmaceutical manufacturers already sell their products in countries with robust rate-setting or price-control authorities because a regulated market is still economically more appealing than no market at all. Simply put, they are unlikely to pass up an opportunity for profit, even if it is somewhat reduced. Second, currently these companies operate under a high-cost, low-utilization model, leaving many Americans and Marylanders without the drugs they need. By introducing a UPL and adopting a high-use, lower-cost model as a result, it is possible that manufacturers could see similar profits. And, finally, Maryland has strong consumer protection laws that prevent advertising without intent to sell and withholding supply for purpose of raising prices. With broad regional and national advertising markets for these drugs, this would give us protection against a manufacturer refusing to sell drugs they are advertising.

For all of these reasons, I respectfully request a favorable report on SB388.

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[i] https://healthcareforall.com/wp-content/uploads/2023/09/Statewide-MD-Poll-on-Prescription-Drug-Affordability-PDAB-091123.pdf

[ii] https://www.npr.org/sections/health-shots/2019/01/07/682986630/prescription-drug-costs-driven-by-manufacturer-price-hikes-not-innovation#:~:text=%22Once%20a%20drug%20has%20been,for%20certain%20types%20of%20drugs

[iii] https://www.citizen.org/article/profits-over-patients/

[iv] https://www.drugs.com/article/top-10-most-expensive-drugs.html

[v] https://pdab.maryland.gov/documents/meetings/pdab_prst_carefirst_20201019.pdf

[vi] https://www.healthaffairs.org/do/10.1377/hpb20131125.510855/full/healthpolicybrief_103-1554749221727.pdf

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