

State Models for Addressing High and Rising Drug Prices

High and rising prescription drug prices jeopardize consumers' health and financial well-being. Consumers experience the impact of drug prices through increasing insurance premiums and high out-of-pocket expenses for medicines. All actors in the drug supply chain, including prescription drug manufacturers, wholesalers, distributors, pharmacies, pharmacy benefit managers, and health insurers, contribute to high and rising prescription drug costs. However, pharmaceutical manufacturers bear ultimate responsibility for setting high prices.

States have the power to lower drug prices for consumers now, and to set a precedent and create pressure for needed federal action. The U.S. Congress and the White House have shown interest in addressing high drug prices, but action can be slow at the federal level while soaring costs continue to strain state and family budgets. States can take action now to provide relief from high-priced medicines, curb future price increases, and help pass savings on to consumers when they are achieved.

Following are model policies for states to consider to rein in drug prices in 2019 and beyond. Those discussed first most directly target drug prices and therefore are likely to have the greatest impact on prices. Our suggested approaches have been carefully selected to help state advocates and lawmakers create policy that will not be impacted by recent court rulings that have limited state power to regulate price increases.¹ The policies discussed later take a more indirect approach to addressing prices and therefore

will not create as significant an impact on prices, although still beneficial. Finally, Families USA cautions against prioritizing approaches to import drugs from Canada, as these policies are less likely to bring savings despite their public appeal.

- » **Establish a prescription drug affordability board.** States can enact legislation to establish an affordability board to set upper reimbursement limits that all payers in the state will pay for drugs priced over a certain amount to rein in outrageous price increases. To avoid bias, these boards can be comprised of nonpolitical appointees with expertise in medicine or health care, and with all potential conflicts of interest declared. To help determine a fair reimbursement rate for payers, board members will review the price of the drug in the state, a justification for the price submitted by the drug manufacturer, details about discounts provided for the drug, and other relevant factors. Maryland proposed bills H.B. 1194² and S.B. 1023³ from 2018 are examples of such legislation.

» **Fine drug manufacturers for price gouging.**

After a prescription drug comes to market, prescription drug manufacturers often increase the price year after year. To limit annual price increases, states can enact legislation that fines drugmakers for price increases that exceed a set threshold. “A Tax on Drug Price Increases Can Offset Costs”⁴ from The Pew Charitable Trusts provides information about how this could work at the state level. In Illinois, proposed H.B. 2880⁵ takes this approach to curbing excess price increases.

» **Require prescription drug price transparency.**

State legislatures that hesitate to work more directly on drug pricing reforms can consider transparency laws to eliminate some of the mystery around drug pricing practices throughout the supply chain and to build a foundation for addressing abuses that are discovered through transparency. California⁶ and Oregon⁷ led the way by passing transparency bills that require manufacturers to disclose when drug prices increase beyond certain thresholds. California’s legislation requires prior notification of these price increases to allow payers and consumers time to adjust for the increased price before it takes effect. These bills also add scrutiny of drug prices to existing insurance rate review processes. The laws require information on drug prices, profits, and other practices to be made public and, in some cases, justified to relevant agencies.

» **Regulate pharmacy benefit managers.** As described above, the entities most responsible for high and rising drug prices are pharmaceutical manufacturers. Families USA therefore recommends that policies to lower drug prices should directly target manufacturers. However, some state legislatures have shown an interest in enacting policy that targets pharmacy benefit manager

(PBM) practices that can harm consumers and increase drugs costs. PBMs are hired by health plans to negotiate drug prices, build formularies, and pay pharmacy claims. Plans expect PBMs to drive down drug prices, but their practices can also inflate costs. States can require PBMs to register with state authorities in order to enforce reforms on business practices. California⁸ includes registration as a mechanism for regulation in its PBM laws. States interested in changing PBM practices can:

- » Require that consumers pay the lowest cost at the pharmacy counter. Some PBM contracts have historically restricted pharmacists from revealing to consumers if it would be less expensive for them to pay for their drugs out of pocket rather than using their insurance coverage. Although Congress enacted federal laws⁹ in 2018 to prohibit these contract terms, states can do more to ensure that consumers feel the benefits of banning these types of contracts. States can consider the following:
 - Require insurers to count cash payments for covered drugs toward a consumer’s in-network deductible and out-of-pocket cap. For example, A.B. 315,¹⁰ enacted in California in 2018, requires cash payments to count toward a consumer’s deductible and out-of-pocket cap, and H. 463,¹¹ passed in Kentucky in 2018, requires cash payments to count toward an out-of-pocket cap.
 - Require pharmacists to disclose the lowest out-of-pocket cost option available to a consumer at the point of sale.
 - Restrict a PBM’s ability to charge covered consumers more than the cash price of a prescription they fill, as in Florida H. 351, enacted in 2018.¹²

A Note on Prescription Drug Importation

Some states¹³ have begun pursuing options to import prescription drugs from Canada. This proposal is politically appealing because it is easy to understand and can raise awareness around the issue of unaffordable drug costs. However, Families USA is concerned about the feasibility of importation for states and whether it will generate desired savings for consumers.

There is no guarantee that savings on imported drugs will be passed on to consumers. An analysis of European importation programs found that “[t]he degree to which drug importation provides savings to consumers and to the health care system is heavily influenced by the financial incentives and regulatory structures of the importing country’s market.”¹⁴ In other words, the design of the rest of the health system has to be optimized to pass savings from imported drugs on to the consumer. Plans would need to opt in to covering imported drugs from the state-run wholesaler so their purchases will count toward consumers’ benefits and ensure that savings are passed on to consumers. Currently there is no legal guarantee that savings from imported drugs would be reflected in premiums and cost sharing.

Importation could drive up Canada’s prices without bringing savings to the U.S. Drug prices in Canada are the second highest in the world, and the Canadian market is so small that too much importation could raise prices

in the country without creating significant savings in the U.S. If a state purchases more medicines than Canada, the pharmaceutical industry may find it more profitable to raise prices in Canada without benefit for the state attempting to import medicines. In 2018, four states spent nearly the same or more than Canada on prescription drugs—California, Florida, Illinois, and Texas—while many more states are close to Canada’s spending.¹⁵ If even just a handful of these states begin importing drugs from Canada, prices could rise in Canada.

States cannot import medicines without federal approval. Any plan to import medicines from another country on behalf of a state requires approval from the secretary of the U.S. Department of Health and Human Services. This means that despite a state legislature’s efforts, a final determination will be up to the federal government on whether a state can move forward with a wholesale importation plan.¹⁶ Despite the popularity of these proposals, U.S. Secretary of Health and Human Services Alex Azar has called importation

proposals a “gimmick,”¹⁷ though he also directed the Food and Drug Administration (FDA) to investigate importation to address price spikes.¹⁸ It is unknown whether states would receive federal approval for importation policies from the Trump administration.

States may not have the resources to set up an importation infrastructure. State agencies, especially those with stretched budgets, are unlikely to have the resources to set up a prescription drug wholesaler, which would be necessary for importation. A wholesaler needs facilities for storage, quality testing, and compliance with FDA guidelines. The state would also have to work with distributors, purchasers, pharmacies, and other actors in the system to offer acquired medicines at a price lower than those purchased through a standard wholesaler. As current passed law, Vermont’s importation bill could save as much as \$1 million to \$5 million, but the costs of implementing the program would be high enough to outweigh the savings.¹⁹

Conclusion

Drug prices are too high for many consumers to afford, and contribute to rising insurance premiums, deductibles, and other cost sharing. While the federal government continues to debate the issue of high drug prices, states can and should lead the way in providing much needed relief to consumers and urging the federal government to take action by making changes at the state level. Families USA is excited to partner with state advocates, lawmakers, and other partners to rein in high drug prices at the state level. Please reach out to Families USA at info@familiesusa.org to discuss how we can work together on this issue.

Endnotes

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