Cha-Ching! Lowering Rx Costs

Vincent DeMarco
August 16, 2018
Maryland Citizens' Health Initiative
Maryland Health Care for All! Coalition
Would prohibit manufacturers and wholesalers of off-patent or generic prescription drugs from engaging in price gouging

**Price-gouging**: an "unconscionable" increase in the price of a prescription drug.

**“Unconscionable" price increase**: one which is excessive and unjustified, and results in harm to consumers because of the importance of the drug to their health and because there is insufficient market competition to ensure access to the drug.
If the Attorney General determines that price gouging has occurred, the Attorney General must allow a manufacturer or wholesaler the opportunity to meet with the Attorney General to discuss the matter before taking legal action. If the prescription drug is actively manufactured and marketed for sale in the United States by three or fewer manufacturers, then the Attorney General may go to court to seek these remedies:

1. Require the manufacturer or wholesaler to provide relevant information sought by the Attorney General,
2. Issue an order prohibiting price gouging activities,
3. Restore to consumers money they lost as a result of price gouging,
4. Require the manufacturer to make the drug available to participants in Medicaid and other State health programs at the pre-gouging price for up to a year,
5. Impose a civil penalty of up to $10,000 for each violation.

The statute also:

- authorizes the Department of Health and Mental Hygiene to provide notification to the Attorney General of certain drug price increases;
- makes clear that wholesale distributors cannot be held liable for price increases directly attributable to the manufacturer: and,
- protects the confidentiality of certain information provided to the Attorney General by manufacturers or wholesalers.
Legal Challenge

1. Association for Accessible Medicines (AAM) challenged the constitutionality of the anti-price-gouging law in federal district court. A Federal judge dismissed the complaint.

2. AAM appealed the decision to the 4th circuit, which reversed the district court and declared the law unconstitutional. The basis for the 4th circuit court’s decision was the finding that the anti-price-gouging law violates the dormant commerce clause of the U.S. Constitution by interfering with interstate commerce. The fourth circuit recognized that at least 2 other circuits (9th and 10th) have different interpretations of the dormant commerce clause, which we believe would result in those circuits upholding the anti-price gouging law.

3. The Attorney General is deciding whether to appeal to the Supreme Court of the United States.
Drug Cost Commission

Maryland has used a rate setting commission to set hospital rates since 1974 and it is well established in Maryland. The federal government has endorsed it and hospitals understand the need for rate setting. This law would establish a rate setting commission similar to Maryland’s hospital rate setting commission in order to expand access to life-saving drugs.

This law would target brand name drugs as Maryland’s current price gouging law targets generic drugs. Most of the spending increases have occurred in specialty drugs that cost over $30,000 annually. They are 1% of drug sales but 30% of drug spending. The very high prices mean that most people cannot afford these drugs. For example, Hepatitis C, the infectious disease that kills more people in Maryland than any other disease (more than AIDS), can be completely cured with a new drug but only 15% of the population can afford it.

We are proposing a public utility model like the Health Services Cost Review Commission but only for high-priced drugs. For drugs costing over $30,000 a year, the prescription drug corporation would be required to explain to Maryland the rationale for the high cost and the independent state agency would then set the reasonable amount to pay, similar to the process Maryland uses to set hospital rates.
Maryland Lawmakers Host Town Halls to Lower Costs of Prescription Drugs

Doctor: high drug pricing kills patients

Maryland weighs new approach to curbing prescription drug costs
Thank you!

www.healthcareforall.com
(410)235-9000

Health Care for All!
2600 St. Paul Street
Baltimore, MD 21211