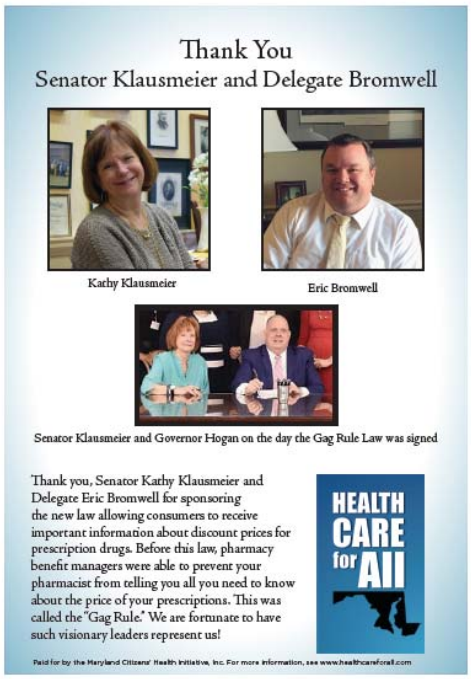
Cha-Ching! Lowering Rx Costs

Vincent DeMarco
August 16, 2018
Maryland Citizens' Health Initiative
Maryland Health Care for All! Coalition





HB 631: Off-patent or generic prescription drug price gouging legislation

- 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.

HB631

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.

HB631

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.



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How the drug industry blew it in Md.

BY LEN LUCCHI

Over the last decade, the prescription drug industry has spent $2.3 billion in federal lobbying, plus more in the state capitals. According the Center for Responsive Politics, the pharmaceutical and health products industry spent more on federal lobbying in 2015 than any other industry. No wonder no legislative proposal to curb skyrocketing prescription drug costs has passed anywhere in this nation.

That is until now.

Last month, Maryland became the first state in the nation to enact a law that protects people from price gouging by prescription drug manufacturers. The law, which passed both houses of the Maryland General Assembly by overwhelming, bipartisan majorities, but without the governor's signature, authorizes the attorney general of Maryland to sue manufacturers of off-patent and generic drugs for price increases that shock the conscience of a consumer and return that money to those that pay for those drugs.

Proponents of this legislation, a coalition of grassroots organizations led by the Maryland Citizens' Health Initiative, were outspent by the opponents, trade groups and drug companies, by a margin of more than five to one, according to the most recent lobbying activity reports filed with the State Ethics Commission. So why did the drug industry fail to stop this legislation in Annapolis when it has repeatedly succeeded in stifling similar legislation in Congress and across the country?

The answer lies in what the drug industry did wrong and the advocates did right. The drug industry committed some serious tactical errors. First, during the debate on the legislation, it became apparent that the industry was grossly misinterpreting it, thinking that provisions authorizing Maryland's Medicaid program to notify the attorney general of certain price increases were actually a restriction on the attorney general's authority to sue price gougers, which they were not. Second, the opponents were unwilling to compromise on the bill's provisions – a big turnoff to undecided legislators. Third, the industry made the legislation a partisan issue, rallying Republican leaders to speak out against the bill – a big mistake in a legislature with an overwhelming Democratic majority.

Besides the industry's errors, the advocates had some unique advantages. First, they had a credible, popular leader at the helm. From his decades in the General Assembly, Attorney General Brian Frosh had deep relationships among lawmakers and was relentless in pushing the bill to the finish line.

Second, the advocates followed the public advocacy prescription contained in Michael Pertschuk's 2010 book, "The DeMarco Factor" (named after Vincent DeMarco, the President of the Maryland Citizens' Health Initiative), by enlisting the talents and research of some of the nation's foremost experts at the Johns Hopkins University, arming themselves with compelling data from a benchmark public opinion survey, assembling a broad-based coalition of senior, labor, professional, religious and civic organizations to engage in grassroots advocacy, and presenting their case through the media, both in paid advertising and the free press.

Third, with all of the outrageous revelations about astronomical drug price hikes, the public mood was strongly in favor of the legislature taking bold action.

As Attorney General Frosh said, "The pharmaceutical companies are extremely powerful and they're usually able to kill bills like this. But they weren't able to this time because people are really feeling the pain, and because of Maryland Citizens' Health Initiative's excellent organizing skills."

Len Lucchi (llucchi@ommg.com) is the longtime contract lobbyist for the Maryland Citizens' Health Initiative Education Fund.

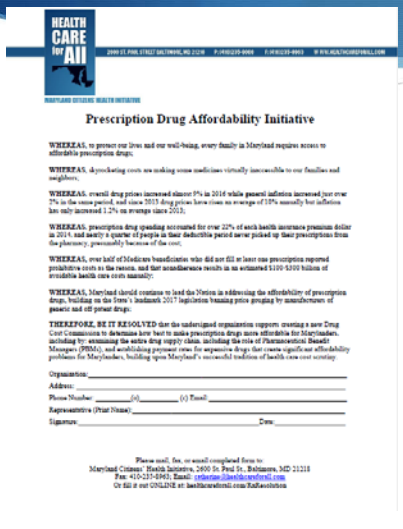
Legal Challenge

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



Prescription Drug Affordability Initiative

WHEREAS, to protect our lives and our well-being, every family in Maryland requires access to affordable prescription drugs;

WHEREAS, skyrocketing costs are making some medicines virtually inaccessible to our families and neighbors;

WHEREAS, overall drug prices increased almost 5% in 2016 while general inflation increased just over 2% in the same period, and since 2013 drug prices have risen on average of 10% annually but inflation has only increased 1.2% on average since 2013;

WHEREAS, prescription drug spending accounted for over 22% of each health insurance premium dollar in 2014, and nearly a quarter of people in their deductible period never picked up their prescriptions from the pharmacy, presumably because of the cost;

WHEREAS, over half of Medicare beneficiaries who did not fill at least one prescription reported prohibitive costs as the reason, and that nonadherence results in an estimated $100-$300 billion of avoidable health care costs annually;

WHEREAS, Maryland should continue to lead the Nation in addressing the affordability of prescription drugs, building on the State's landmark 2017 legislation banning price gouging by manufacturers of generic and off-patent drugs;

THEREFORE, BE IT RESOLVED that the undersigned organization supports creating a new Drug Cost Commission to determine how best to make prescription drugs more affordable for Marylanders, including by: examining the entire drug supply chain, including the role of Pharmaceutical Benefit Managers (PBMs); and establishing payment rates for expensive drugs that create significant affordability problems for Marylanders, building upon Maryland's successful tradition of health care cost scrutiny.

Organization: _____

Address: _____

Phone Number: _____ (o) _____ (c) Email: _____

Representative (Print Name): _____

Signature: _____ Date: _____

Please mail, fax, or email completed form to:
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Fax: 410-235-8965, Email: rebecca@healthcareforall.com
Or fill it out ONLINE at: healthcareforall.com/ReAssolution

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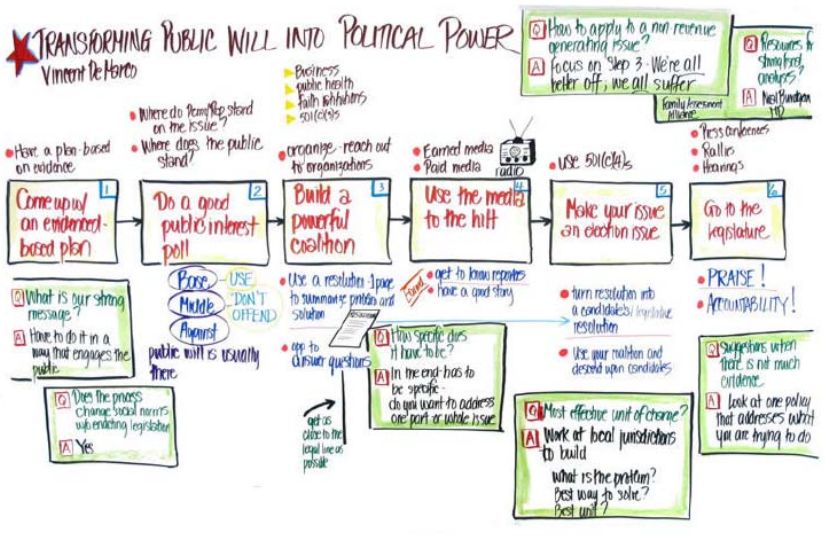


DeMarco

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.

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Media

THE BALTIMORE SUN
baltimoresun.com

Doctor: high drug pricing kills patients

The Washington Post
Democracy Dies in Darkness

Maryland weighs new approach to curbing prescription drug costs

WBOC 16
DELMARVA'S NEWS LEADER

Maryland Lawmakers Host Town Halls to Lower Costs of Prescription Drugs



Thank you!

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