



In Opposition to Oregon House Bill 2658

February 6, 2019

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) opposes HB 2658 requiring manufacturers to report planned price increases to the Department of Consumer and Business Services (DCBS) at least 60 days in advance.

HB 2658 would require biopharmaceutical manufacturers to notify DCBS of planned increases in the list price of a medicine at least 60 days prior to the increase taking effect in the market. The proponents of these proposals insist that patients and payers deserve pricing transparency, but they fail to recognize the real hurdles and risks caused by advance price notification and the serious consequences for every stakeholder in the market, including patients.

Advance notification of price increases does not save money for patients.

Manufacturers already disclose a range of information, including information on costs and sales. Publishing proprietary, drug-specific information will not provide the public with any useful data for making informed decisions about treatment options. Too often, negotiated savings do not make their way to the patient. More than half (52%) of commercially insured patients' out-of-pocket spending for brand medicines is based on the full list price, which does not include the negotiated discounts and rebates that go to others in the supply chain, such as PBMs and insurance plans.

For patients, out-of-pocket costs for a medicine are determined by their insurer and PBM. Mandatory price reporting of a medicine's list price has little impact on what patients actually pay because it does not reflect the rebates or discounts their insurer or PBM receive for the medicine, which impacts the level of insurance coverage for that medicine and determines the patient's final take-home cost.

Pursuant to legislation enacted in 2017, California state purchasers, licensed healthcare service plans, certain health insurers, and pharmacy benefit managers (PBM) can register in California to receive 60-day advance notice of certain prescription drug price increases.

Advance notification of price increases will be given to the state and ultimately to entities that purchase drugs through national contracts. Given the nature of these national contracts, advance notification is already available because of the 2017 law that passed in California. Some purchasers that conduct business in California, including Kaiser Permanente, Anthem, and Aetna, also do business in other states. HB 2658 requiring advance notice of price increases and additional manufacturer reporting could cost a

state more annually to provide purchasers with information that may already be available as a result of California's law.

Additionally, PhRMA has challenged the California law on a number of constitutional grounds. The litigation is pending. We believe that advance notification laws are unconstitutional because they regulate drug pricing outside the state. If the law is invalidated, a similar analysis would apply to like legislation run in other states. If the law stays in effect, it would provide for the advance notice sought in another state's legislation, and thus would make that state bill redundant.

Advance notification of price increases could lead to speculative purchasing, or distorted market power, in the prescription drug supply chain.

Advance price notification measures would threaten years of work by regulators and industry to eradicate practices to profit from fluctuations in price. By notifying payers of anticipated price increases in advance, distributors – especially those that do not previously negotiate contractual agreements with manufacturers – are incentivized to purchase and stockpile medicines at the old price, and wait to sell them at the new price once the increase goes into effect. In the past, this has resulted in prices going up, not down, for the entire supply chain.

A Health Affairs Blog post noted, “Countering these likely illusory advantages of the advance price increase notices is the risk that they will have unintended, negative consequences. We can expect drug wholesalers and distributors to react to the notices by increasing their purchases to beat the price rise...This practice, while legal, appears to serve no one's interest but those profiting from the spread. (California) SB-17 would help these players eliminate the current risk that they might be purchasing too far in advance of an increase or that the size of the increase (and the opportunity to profit from it) might be too modest to justify the added cash flow and inventory costs.”¹

Advance notification of price increases could cause medicine shortages for patients.

Medicine shortages are caused by a wide variety of market complications, such as lack of raw materials from suppliers or discontinuations of medicine. They can also be caused by disturbances within the pharmaceutical supply chain. If distributors are incentivized to hoard medicine after learning of an upcoming price increase from a required advance price notification, they could cause a shortage in the market of that medicine by purchasing large quantities of it at the lower price. Such behavior has occurred in the past where providers and patients were not able to access the medicines they needed because the distribution channel was hindered up by such misaligned incentives. These market distortions have largely been eliminated but could return because of advance price notification provisions.

Regulators and industry leaders have worked for decades to ensure the biopharmaceutical supply chain remains a robust marketplace for payers and patients. Proposals to reveal confidential business critical, proprietary information in advance of formal release will jeopardize the market-based mechanisms that deliver new and affordable medicines to patients.

¹ “California Takes on Drug Pricing: Real Progress Or Illusion?” Health Affairs, October 2, 2017

Information required to be reported by manufacturers would paint an inaccurate portrait of the prices paid by purchasers.

The reporting requirements are tied to Wholesale Acquisition Cost (WAC) which does not account for the significant discounts and rebates manufacturers provide. In 2017, those discounts and rebates totaled over \$150 billion. Ignoring rebates and discounts in calculating cost increases substantially overestimates the true price increases experienced by payers. In fact, when considering these rebates and discounts, recent research studies show that in 2017, drug price spending increased by 0.4 percent according to CMS, well below total health spending growth.

Rather than focusing on mandatory disclosure of information which will do nothing to benefit consumers, legislators could focus on concepts that would actually help patients better understand their insurance design, and save money at the point of sale.

PhRMA opposes HB 2658 for the above stated reasons. Please vote "NO" on HB 2658.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than \$600 billion in the search for new treatments and cures, including an estimated \$71.4 billion in 2017 alone.