



March 3, 2021

The Honorable Deb Patterson Chair, Senate Committee on Health Care  
900 Court St. NE  
Salem OR 97301

RE: Support for SB 764

Dear Chair Patterson and members of the Senate Committee on Health Care,

Kaiser Permanente is pleased to support SB 764, which will help crack down on anticompetitive “pay-for-delay” arrangements in the pharmaceutical industry. These tactics delay patient access to generic and biosimilar drugs, which empowers brand name manufacturers to maintain monopoly pricing for longer periods of time.

Kaiser Permanente is deeply concerned about the burden high drug prices impose on our ability to carry out our mission of delivering high-quality, affordable care to the patients and communities we serve. Nearly one in four Americans who take prescription drugs report difficulty affording them, which can lead to skipping doses, poorer health outcomes, and decisions not to pay for other vital day-to-day needs.<sup>1</sup> In OR and SW WA, Kaiser Permanente spends over \$500M annually on the cost of drugs, including outpatient, inpatient, and clinic-administered medications. While we have robust pharmacy programs in place to ensure the right medication gets to the right patient at the right time, we are still seeing significant increases in drug spend year-over-year.

In 2020, 1% of our outpatient prescriptions accounted for over 70% of our drug spend. Many of these were specialty medications that can often be impacted by Pay for Delay type of tactics to prevent, for example, a biosimilar or generic drug from coming to the market. Anticompetitive pay-for-delay arrangements do not provide any value to patients and increase the already significant financial strain prescription drug costs upon patients and the health care system. We believe curbing anticompetitive abuses in the pharmaceutical industry should be key component of policy solutions to make health care more affordable in Oregon and across the country.

Patent abuses are also a significant contributor to a dysfunctional pharmaceutical market that blocks competition and leads to unsustainably high prices. While these arrangements can take many forms, they typically involve a brand name manufacturer providing a generic or biosimilar manufacturer with something of value to delay bring a generic competitor to market. These arrangements can significantly increase costs for patients, taxpayers, and the health care system:

- An analysis of 20 drugs impacted by known pay-for-delay deals found that these arrangements delayed generic entry by five years on average. The brand drugs at issue cost 10 times more than their generic equivalents on average, and in some cases cost 33 times more.<sup>2</sup>

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<sup>1</sup> Kaiser Family Foundation. (March 2019). Poll: Nearly 1 in 4 Americans Taking Prescription Drugs Say It’s Difficult to Afford Their Medicines. Available at: <https://www.kff.org/health-costs/press-release/poll-nearly-1-in-4-americans-taking-prescription-drugs-say-its-difficult-to-afford-medicines-including-larger-shares-with-low-incomes/>.

<sup>2</sup> U.S. PIRG & Community Catalyst. (January 2013). Top Twenty Pay-for-Delay Drugs: How Drug Industry Payoffs Delay Generics, Inflate Prices and Hurt Consumers. Available at: [https://uspig.org/sites/pirg/files/reports/Top\\_Twenty\\_Pay\\_For\\_Delay\\_Drugs\\_USPIRG.pdf](https://uspig.org/sites/pirg/files/reports/Top_Twenty_Pay_For_Delay_Drugs_USPIRG.pdf)

- The Federal Trade Commission (FTC) has cited pay-for-delay arrangements as anticompetitive and estimates that they cost billions annually in higher drug costs.<sup>3</sup>
- In 2014 and 2015 alone, there were 14 known and anticompetitive pay-for-delay deals involving 11 different drugs with combined sales of \$4.6 billion.<sup>4</sup>

As policymakers continue to evaluate options for drug pricing reform, it is imperative that pay-for-delay and other anticompetitive behavior is met with rigorous review and enforcement at both the state and federal level. While the FTC has the authority to take action against these arrangements, they do not always have the resources or strong enough enforcement tools to pursue all challenges that may benefit consumers and patients. Building more robust state-level enforcement in Oregon against pay-for-delay arrangements through SB 764 would strengthen deterrents for manufacturers to pursue these arrangements and fill gaps in oversight at the federal level.

Patients deserve fair, affordable pricing for prescription drugs. SB 764 would help facilitate this goal in Oregon by making it more difficult for drug companies to engage in anticompetitive practices that prolong sky-high monopoly pricing on drugs in ways that were not intended under our federal patent laws. Kaiser Permanente is proud to support SB 764 and appreciates your leadership on this important issue to help create more competition in the pharmaceutical market to bring down drug costs for everyone.

Sincerely,

Dr. Sameer Awsare  
Associate Executive Director  
The Permanente Medical Group

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<sup>3</sup> FTC. (January 2010). Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions. Available at: <https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-pay-offs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf>

<sup>4</sup> FTC. (November 2017). Agreements Filed With the Federal Trade Commission Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Overview of Agreements Filed in Fiscal Year 2015: A Report By the Bureau of Competition. Available at: <https://www.ftc.gov/reports/agreements-filed-federal-trade-commission-under-medicare-prescription-drug-improvement-9>.