Addressing the Prescription Drug Affordability Crisis:
A Golden Opportunity for State Lawmakers

Prescription drug affordability is a top concern for U.S. voters across political ideologies and throughout the nation. While the federal government and Congress continue to debate the issue, state lawmakers can and should take the matter into their own hands.

Establishing an independent body to assess prescription drug affordability is a new option for state lawmakers that can significantly curtail prescription drug pricing abuses and lower costs for families, taxpayers, and businesses. Lawmakers in Maryland and Maine already have enacted such legislation.

This fact sheet provides a brief overview of the urgent need for state action on prescription drug pricing abuses and key insights about this powerful approach to tackling the issue.

How the Pharmaceutical Industry’s Price Abuses Are Affecting Your Constituents

The extraordinary increases in drug prices in the last decade affect most families in the nation. They touch families in urban and rural areas and families that identify as conservative and progressive. High drug prices can interfere with their ability to pay for basic necessities such as groceries or heating in the winter. The problem has become so acute that nearly one in three adults report cutting a dose in half or even refraining from taking the medicine they need due to costs.

In the last 12 months, considerable media attention has focused on potential action by the federal government and Congress to address abusive drug pricing, including through Medicare negotiation. The outcome of those efforts, however, remains uncertain.

State lawmakers have the ability and the overwhelming support of their constituents to act to address this problem. For example, in national polls, nearly nine in 10 voters support allowing the government to negotiate directly with drug manufacturers to lower prescription drug prices, including nine in 10 Democrats and eight in 10 Republicans. State-specific polls across the nation mirror these opinions. And voters report that their support for specific lawmakers is closely tied to those lawmakers’ action on rapidly increasing drug prices. For example, three out of four voters surveyed nationally feel less favorably toward elected officials who are unsupportive of legislation to lower drug prices.
We need some common-sense rules of the road so that the interests of patients are protected, not just those of drug company shareholders and CEOs.

— Democratic and Republican focus group respondents in New Jersey resonated with this message.

Medicines don’t save lives if people can’t afford them.

— Focus groups in Colorado and New Jersey resonated with this message.

Nearly One in Three Say They Haven’t Taken Their Medicine as Prescribed Due to Costs

<table>
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<th>Percent who say they have done the following in the past 12 months because of cost:</th>
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<td>Not filled a prescription for a medication</td>
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<tr>
<td>Taken over-the-counter drug instead</td>
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<tr>
<td>Cut pills in half or skipped doses</td>
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<td>Percent who did not take prescription medicine as directed because of the cost</td>
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Source: KFF Health Tracking Poll (conducted February 14-24, 2019)

Prescription Drug Affordability Council: A State Model for Addressing Abusive Pharmaceutical Prices

A new and potentially very effective way for state lawmakers to address prescription drug pricing abuses is to establish a prescription drug affordability council. The approach is based on well-tested and effective state models such as utility rate commissions and insurance rate review processes. In practice, the council reviews the costs of high-priced medications and imposes an upper payment limit to cap how much payers may spend on those drugs in the state. Through the review process, a state can not only lower prices but also limit the power of middlemen in the drug supply chain, which can drive down excessive costs throughout the system. The savings identified by the council would accrue directly to families and also to small and large business employers and state taxpayers through a reduction in overall cost sharing and health insurance premiums.

The Pharmaceutical Lobby’s Arguments Against Action Have Been Debunked

The pharmaceutical industry sends thousands of lobbyists to our nation’s capital and state capitals to argue against action on abusive drug prices. These arguments take many nuanced forms but typically boil down to three main points — all of which have been debunked: (1) lawmakers don’t have the Constitutional authority to act, (2) lowering prices will kill innovation, and (3) lowering prices will kill jobs. Let’s take each argument point by point:
Drug companies often do not invest their research dollars into new, innovative treatments.

» **Opponents falsely claim** that regulating prescription drug costs is unconstitutional. **But:**

» Ultimately, the constitutionality of prescription drug affordability councils will be determined by the courts. However, the proposals to create the councils are modeled after long-standing and constitutionally permitted public service commissions that set consumer payment rates for electricity, natural gas, and telecommunications in all 50 states.¹⁰

» Unlike other proposals that relate to sales across state lines, and that have been struck down in court, the council does not regulate sales that typically occur outside the state, such as those between wholesalers and manufacturers.¹¹

» **Opponents falsely claim** that lowering drug prices will stop companies from developing new, lifesaving drugs. **But:**

» Drug companies reap some of the highest profits of any industry and take in worldwide revenue in excess of $1 trillion.¹² Their margins are so healthy that drug companies spend more on advertising than on researching and developing new medicines. An analysis in The Washington Post shows that nine of the 10 largest drug companies spend more than twice as much on advertising than on research and development.¹³

» Drug companies often do not invest their research dollars into new, innovative treatments. In fact, instead of innovating, these companies mostly game patent and exclusivity laws — eight of every 10 newly patented drugs are variations on existing medicines.¹⁴

» **Opponents falsely claim** that a prescription drug affordability council would be a job killer. **But:**

» High pharmaceutical costs typically do not create jobs; they eat away at the profitability and financial health of most of our nation’s businesses. Each year, pharmaceutical prices escalate and account for a greater and greater share of health insurance premium costs. In the past five years, prescription drug costs have increased at more than double the annual rate of inflation¹⁵ and, in 2018, a startling 25% of health insurance premium dollars paid for prescription drugs.¹⁶

» Drug makers can recover revenues and even prosper after a price reduction. According to a head of global research for Bayer, which is famous for blood pressure and heart medications, when the company “significantly” reduced the price of a best-selling drug in the Chinese market, it took less than a year for the volume of sales to “more than compensate for the price reduction.”¹⁷

» As one of the most profitable industries in the world,¹⁸ there is plenty of margin within the pharmaceutical industry; therefore, it is unlikely that price reductions would be the main driver of large layoffs. In fact, some companies with the worst records for abusive pricing lay off workers even as they increase prices.¹⁹
**Strategies to Pass Affordability Council Legislation**

Recently, prescription drug affordability councils have been enacted in several states and are in various stages of development (see page 5). Key lessons learned from these efforts can help ensure success in other states as lawmakers pursue similar efforts.

**Build a strong outside coalition that brings consumers, businesses, and the health care sector together.**

Passing legislation to implement a prescription drug affordability council requires a strong outside coalition that represents the voices of multiple stakeholders. In Maryland, where the legislature passed such a proposal, more than 300 organizations mobilized around the effort. Those organizations included influential labor, faith, health care, patient advocacy, community-level, and business partners that all agreed that Maryland’s Prescription Affordability Board, as its council is called, had the right political currency for the state. In Oregon, a similar coalition worked to pass legislation on prescription drug transparency in 2017. That coalition included hospitals, insurers, small businesses, and health care providers.

This range of stakeholders can capture multiple voices, including within the health care industry, and unify them around the issue of high drug prices. When health care consumers, providers, hospitals, and other segments of the health care sector unify with a broader coalition that includes businesses, labor unions, and faith groups, it becomes much more difficult to accept the views espoused by drug makers alone.

**Key Features of Legislation to Ensure Real Reductions in Drug Costs**

Through the work of other states, lessons are emerging about how to design prescription drug affordability councils to ensure they have real impact. Some key design features include:

- **Establish a price threshold to trigger review.**
  The council should have a requirement to consider drugs for review, based on a price threshold, or trigger, for reviewing the cost of drugs. Brand name drugs and biologics, which are typically sold at higher prices, should have a higher threshold than generics and biosimilars. Brand name drugs see yearly price increases above the rate of inflation, and the trigger should take this into account. There should also be a process for consumers and patients to suggest medicines that do not meet the council’s requirements for review, but that cause affordability problems.

- **Set an upper payment limit established by experts.**
  The council should be authorized to apply an upper payment limit to payments made within the state for costly drugs. For example, a limit might be established for a leading leukemia medicine, Lemtrada, which can cost upwards of $90,000 per patient per year. That upper limit...
may be based on a number of economic factors set out in the legislation, including a review of the full prescription drug supply chain, costs to payers and individuals in the state, and costs for developing and manufacturing the drug. Setting such limits can ensure that payers in and residents of the state pay a fair price for the drug, based on a more complete understanding of the market.

» **Ensure councils have the ability to set an upper payment limit across the state.** The council’s authority should not be limited entirely to state employees or smaller purchasers; instead it should extend payment limits to all payers who opt in to using them. Thus, the policy would protect more consumers from high drug prices and alleviate concerns about costs shifting to other payers in the state.

» **Enable experts to guide the council, but ensure they do not have conflicts of interest.** A conflict-free panel of experts should be established and funded to assess the pricing of high-cost drugs and set upper payment limits. A best practice includes a legal requirement that appointments to the council be made by multiple elected leaders. A consultative roundtable of non-voting stakeholders representing the drug manufacturing industry, insurance companies, patient organizations, government agencies, and consumers can also advise the council and make recommendations regarding upper payment limits.

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**The Maryland Prescription Drug Affordability Board**

The Maryland legislature passed a law in 2019 to create a prescription drug affordability board with five appointed positions. The board is required to examine the impact of high drug prices in the state. With additional approval from Maryland’s Legislative Policy Committee, the board will have the authority to rein in prescription drug costs, including by establishing an upper payment limit. Currently, these reforms apply only to state- and county-level payers. In 2023, the board will be required to recommend to the Maryland legislature how it should expand the board’s role to affect all payers in the state.

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**The Maine Prescription Drug Affordability Board**

In 2019, Maine passed legislation creating its Prescription Drug Affordability Board. The board will be tasked with using prescription drug spending data to develop proposals to help lower costs for public payers, including any division of state, municipal, or county government that administers a health plan. The law does not explicitly call for the use of an upper payment limit method, but it leaves the possibility open. The board will create annual spending targets for a public payer’s total prescription drug spending, as well as targets for specific drugs that pose affordability challenges. Maine’s law also establishes an advisory council, drawn from government agencies, to assist the board in developing spending targets.
Resources Available to State Lawmakers

Families USA is happy to be a resource for state lawmakers who pursue this policy proposal. Our network of state advocates, industry thought leaders, and legislative champions are available to support the strongest possible effort to tackle prescription drug prices in your state. Contact Justin Mendoza, Senior Partnerships Manager, at jmendoza@familiesusa.org.

The resources listed below can help to further contextualize the urgent need for action on prescription drug prices and the options available in your state.

» Consumer Reports tracked the tradeoffs consumers make to afford their prescriptions. See How to Pay Less for Your Meds. 27

» The Kaiser Family Foundation conducts public opinion research on prescription drug pricing through the Kaiser Family Foundation Tracking Poll. 28

» Arnold Ventures pressure-tested, via a poll, opponents’ false claims about federal drug pricing legislation. 29

» Families USA and the Maryland Citizen’s Health Initiative published an insight column recounting Maryland’s Path to a Prescription Drug Affordability Board. 30

» The National Academy of State Health Policy maintains a database of model legislation, legal background materials, and examples of other state laws on the issue at National Academy of State Health Policy’s resources on Prescription Drug Pricing. 31

» Families USA’s 2019 legislative recap, State Efforts to Rein in High Drug Prices in the 2019 Session, analyzed recently passed prescription drug pricing legislation in multiple states. 32
Endnotes


15 Schondelmeyer and Purvis, Brand Name Drug Prices Increase More than Twice as Fast as Inflation in 2018.
18 Dickson and Ballreich, How Much Can Pharma Lose?
21 See Oregon Coalition for Affordable Prescriptions at https://affordablerxnow.org/.
22 Schondelmeyer and Purvis, Brand Name Drug Prices Increase More than Twice as Fast as Inflation in 2018.
27 Gill, How to Pay Less for Your Meds.
29 Arnold Ventures, Poll Reveals Near-Unanimous Call for Aggressive Congressional Action to Lower Prescription Drug Prices.
30 Robins, Maryland’s Path to A Prescription Drug Affordability Board.

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