

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

Prescription drug affordability is a top concern for U.S. voters across the political spectrum 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 states that has the potential to significantly curtail prescription drug pricing abuses and lower costs for families, taxpayers, and businesses. Lawmakers in Maine and Maryland already have enacted versions of such legislation.

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

### How the Pharmaceutical Industry's Extreme Prices Are Affecting Your Constituents

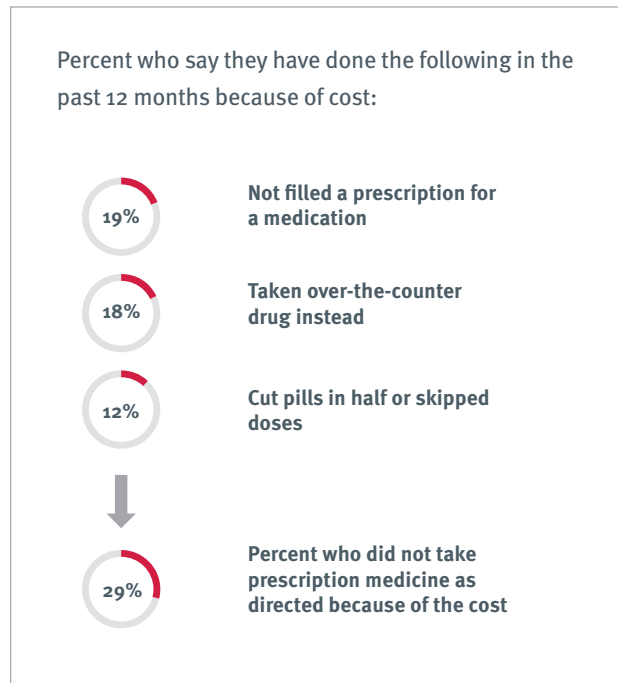
Unjustified, excessive drug price increases hurt more than the patients who rely on the medications. Ultimately, these costs are felt by all families in the nation as insurance premiums rise and the burden on taxpayers increases through public program spending on prescription drugs.<sup>1</sup> High drug costs touch families in urban and rural areas, and families that identify as conservative and progressive. These excessive prices can make it hard for families to pay for necessities

such as groceries or heating in the winter.<sup>2</sup> The problem has become so acute that **nearly one in three adults** does not take the medicine they need due to costs, and many individuals even report cutting a dose in half or not filling a prescription.<sup>3</sup>

In the last 12 months, considerable media attention has focused on potential action by Congress to address abusive drug pricing, including through Medicare negotiation.<sup>4</sup> The outcome of federal efforts, however, remains uncertain.

State lawmakers have the ability and the **overwhelming** support of their constituents to act to solve 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.<sup>5</sup> State-specific polls across the nation mirror these results.<sup>6</sup> And voters report that their support for specific lawmakers is closely tied to those lawmakers acting on rapidly increasing drug prices. For example, in a national survey, three out of four voters feel less favorably toward elected officials who do not support legislation to lower drug prices.<sup>7</sup>

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



Source: KFF Health Tracking Poll (conducted February 14-24, 2019)

## Messaging Matters! Takeaways from Conversations with Constituents



*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.

## A State Model for Addressing Excessive Pharmaceutical Prices

A new and potentially effective way for state lawmakers to address prescription drug pricing abuses is to establish a body to review prescription drug affordability. Although this approach is new, it is based on well-tested, successful state models such as utility rate commissions and insurance rate review processes.

In sum, the new prescription affordability body reviews costs of high-priced medications and could impose an upper payment limit to cap how much payers and patients are required to spend on those drugs in the state. Through payment rate setting, a state can lower costs and limit the power of middlemen in the drug supply chain, which also can drive down excessive costs throughout the system.<sup>8</sup> The savings identified by the independent body would accrue directly to families, small business employers, and state taxpayers through a reduction in overall health insurance premiums.<sup>9</sup>

## The Pharmaceutical Lobby's Arguments Against Action Have Been Debunked

Every year, the pharmaceutical industry sends hundreds of lobbyists to our nation's capital and statehouses throughout the country to argue against action to control drug prices.<sup>10</sup> These arguments take many nuanced forms, but they typically boil down to three main points — all of which have been debunked:

- » Lawmakers don't have the constitutional authority to act.
- » Lowering prices will kill innovation.
- » Lowering prices will kill jobs.

*Drug companies often do not invest their research dollars into new, innovative treatments.*

Let's take each argument point by point.

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

- › Ultimately, the constitutionality of prescription drug payment rate setting will be determined by the courts. However, the model for these proposed processes are longstanding and constitutionally permitted public service commissions that set consumer payment rates for electricity, natural gas, and telecommunications in all 50 states.<sup>11</sup>
- › Unlike other proposals that relate to sales across state lines, and that have been struck down in court, the independent body does not regulate sales that typically occur outside the state, such as those between wholesalers and manufacturers.<sup>12</sup>

» **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.<sup>13</sup> Their profit margins are so high that drug companies spend more on advertising than on researching and developing new medicines. An analysis by *The Washington Post* found that nine of the 10 largest drug companies spent more than twice as much on advertising as they did on research and development (R&D).<sup>14</sup>

- › 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.<sup>15</sup>

» **Opponents falsely claim** that lowering drug prices would be a job killer. **But:**

- › High pharmaceutical costs typically do not create jobs. Instead, 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 premiums. In the past five years, prescription drug costs have increased by more than double the annual rate of inflation.<sup>16</sup> And in 2018, a startling 23% of health insurance premium dollars paid for prescription drugs.<sup>17</sup>
- › Drug makers can recover revenues — and even prosper — after a price reduction. According to a head of global research at Bayer, which is famous for its blood pressure and heart medications, when the company “significantly” reduced the price of a best-selling drug in the Chinese market because of government pressure, it took less than a year for the volume of sales to “more than compensate for the price reduction.”<sup>18</sup>
- › As one of the most profitable industries in the world,<sup>19</sup> 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 drug companies with the worst records for raising prices lay off workers even as they increase prices and profits grow.<sup>20</sup>

- › AstraZeneca announced recently it will invest another \$520 million in manufacturing in France, a country with price controls.<sup>21</sup> This is a clear indicator that drug companies are not afraid to invest in areas where governments have taken a stand on prescription drug costs.

### **Strategies to Pass Affordability Legislation**

Recently, two states have enacted prescription drug affordability initiatives that are in the early stages of development (see “Two States Have Already Passed a Form of Drug Price Affordability Legislation” on p. 5). We’ve provided key insights from these efforts to help ensure success as lawmakers pursue similar plans in other states.

#### ***Build a Strong Outside Coalition That Brings Consumers, Businesses, and the Health Care Sector Together***

Passing legislation to make prescription drugs more affordable requires the backing of a strong outside coalition that represents the voices of multiple stakeholders.

- › In **Maryland**, where the legislature passed such a proposal, more than 300 member 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 had the right political currency for success in the state.<sup>22</sup>
- › 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.<sup>23</sup>

This range of stakeholders can capture multiple voices, including those 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.

#### ***Make Sure the Legislation Includes Key Features to Produce Real Reductions in Drug Costs***

The work of other states provides lessons about how to design prescription drug affordability entities to ensure they have a real impact. Key design features include:

- » **Establish a price threshold to trigger review.** A price threshold, or trigger, should automatically qualify drugs for affordability review. Brand-name drugs and biologics, which are typically sold at higher prices, should have different thresholds than generics and biosimilar products. Prices for brand-name drugs routinely increase every year at rates much greater than the rate of inflation. So, these price increases also should be a trigger for review.<sup>24</sup> There should also be a process for consumers and patients to propose medicines for review that cause affordability problems but may not meet the automatic requirements for review.
- » **Set an upper payment limit established by experts.** The key to successful rate setting is to apply an upper limit to all payments made within the state for costly drugs.<sup>25</sup> 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 cost for the drug that is based on a more complete understanding of the market.

- » **Ensure upper payment limits apply across the state.** Rate setting legislation should begin broadly and not be limited to state or local governments or smaller purchasers; instead, it should extend payment limits to all payers regulated by the state, and allow plans not regulated by the state to use these rates as well. Thus, the policy would protect more consumers from high drug prices and alleviate concerns about costs being shifted to other payers in the state.
- » **Enable experts to guide the body, but ensure they do not have conflicts of interest.** A conflict-free panel of experts should be established and funded to assess the affordability of high-cost drugs and set upper payment limits. A best practice for creating such a panel includes a legal requirement that appointments to the independent body 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 government body and make recommendations regarding upper payment limits.

## Two States Have Already Passed a Form of Drug Price Affordability Legislation



### 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 to state- and county-level payers, with the possibility of expanding in the future. In 2023, the board will be required to recommend to the Maryland legislature how it should expand the board's role to cover all payers in the state.<sup>26</sup>



### The Maine Prescription Drug Affordability Board

In 2019, Maine passed legislation creating its Prescription Drug Affordability Board. The board is 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 through new legislation. The board will create annual targets for each public payer's total prescription drug spending, as well as targets for specific drugs that pose affordability challenges.<sup>27</sup>

## Resources Available to State Lawmakers

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

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

- » Jane Horvath, an independent consultant on prescription drug prices, Medicaid, Medicare, and the commercial insurance market has made her work, services, and research available for state lawmakers via [Horvath Health Policy](#).<sup>28</sup>
- » *Consumer Reports* tracked the tradeoffs consumers make to afford their prescriptions. [See How to Pay Less for Your Meds](#).<sup>29</sup>
- » The Kaiser Family Foundation conducts public opinion research on prescription drug pricing through the [Kaiser Family Foundation Tracking Poll](#).<sup>30</sup>
- » Arnold Ventures tested, [via a poll](#), drug corporations' false claims about federal drug pricing legislation.<sup>31</sup>
- » Families USA's fact sheet, [How to Talk About High Drug Prices: A Messaging Guide Developed from Focus Group Findings](#), explores key messaging that worked well with focus groups in Colorado and New Jersey.<sup>32</sup>
- » Families USA and the Maryland Citizen's Health Initiative published an insight column recounting [Maryland's Path to a Prescription Drug Affordability Board](#).<sup>33</sup>
- » 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](#).<sup>34</sup>
- » 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.<sup>35</sup>

## Endnotes

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- <sup>7</sup> G. Garin and W. Ayres, “Poll: Voters Are Angry about Prescription Drug Prices,” *The Hill*, May 24, 2019, <https://thehill.com/opinion/healthcare/445401-voters-are-angry-about-prescription-drug-costs>.
- <sup>8</sup> National Academy for State Health Policy, *Prescription Drug Affordability Review Board Q&A* (National Academy for State Health Policy, 2019), [https://nashp.org/wp-content/uploads/2019/04/Final-Prescription-Drug-Affordability-Review-Board-QA-4\\_1\\_2019.pdf](https://nashp.org/wp-content/uploads/2019/04/Final-Prescription-Drug-Affordability-Review-Board-QA-4_1_2019.pdf).
- <sup>9</sup> Small Business Majority, *Scientific Opinion Poll: Small Business Owners Say Drug Prices Are Impacting Their Bottom Lines* (Small Business Majority, December 6, 2016), <https://smallbusinessmajority.org/press-release/scientific-opinion-poll-small-business-owners-say-drug-prices-are-impacting-their-bottom-lines>.
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- <sup>19</sup> Dickson and Ballreich, *How Much Can Pharma Lose?*

<sup>20</sup> Mylan laid off workers months after increasing the price of the EpiPen. See, for example, J. M. Shaver, “Mylan Lays Off Around 500 Morgantown Employees, About 15 Percent of Its Workforce,” *WV News: The State Journal*, April 23, 2019, [https://www.wvnews.com/statejournal/news/mylan-lays-off-around-morgantown-employees-about-percent-of-its/article\\_a98e6ee7-fa51-5a53-b473-a57098612533.html](https://www.wvnews.com/statejournal/news/mylan-lays-off-around-morgantown-employees-about-percent-of-its/article_a98e6ee7-fa51-5a53-b473-a57098612533.html).

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<sup>23</sup> See Oregon Coalition for Affordable Prescriptions at <https://affordablernow.org/>.

<sup>24</sup> Schondelmeyer and Purvis, *Brand Name Drug Prices Increase More Than Twice as Fast as Inflation in 2018*.

<sup>25</sup> National Academy for State Health Policy, *Prescription Drug Affordability Review Board Q&A*.

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<sup>32</sup> Families USA, *How to Talk about High Drug Prices: A Messaging Guide Developed from Focus Group Findings* (Washington, DC: Families USA, January 2020), [https://familiesusa.org/wp-content/uploads/2020/01/RX\\_Drug-Price-Messaging\\_Fact-Sheet.pdf](https://familiesusa.org/wp-content/uploads/2020/01/RX_Drug-Price-Messaging_Fact-Sheet.pdf).

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<sup>34</sup> National Academy for State Health Policy, *Prescription Drug Prices* (National Academy for State Health Policy, 2019), <https://nashp.org/policy/prescription-drug-pricing/>.

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