

State Lawmakers Can and Should Protect Consumers from Prescription Drug Price Gouging during COVID-19 and Beyond

The COVID-19 pandemic has brought to light the brutal reality of a health care system that is fundamentally unprepared and struggling to meet the needs of America's families and consumers. Millions of workers have lost their jobs, leaving their families without health insurance, and this is particularly true for people of color, families with children, and low-wage workers.¹ **While America's families are struggling to pay rent and health care bills, the pharmaceutical industry is raising prices for the medicines they need to survive.**²

Nine in 10 voters are worried about rising drug prices due to COVID-19,³ and rightfully so. Prescription drug companies have made record profits over the last decade, well over \$1 trillion,⁴ and the cost of medicines continues to be out of reach for many of America's families. With good reason, consumers do not trust that drug companies — which have a business model conducive to price gouging⁵ — will act in good faith to assure the availability of affordable medications during or after the pandemic. Despite the billions of taxpayer dollars funneled to drug manufacturers to develop life-saving vaccines and therapeutics,⁶ consumers and taxpayers have no guarantee of a fair return on their investment in the form of affordable prescription drugs. As our nation and our families face significant health and economic crises, Congress has enacted legislation that provides trillions of dollars in COVID-19 relief. However, none of these packages have protected consumers from high and rising prescription drug prices. **If federal policymakers are unable to protect consumers, now is the time for state policymakers to step in and lead the way.**

This paper lays out the incentives that drive pharmaceutical industry profits, highlights the failures of federal policymakers to protect consumers from high and rising drug prices, and offers concrete policy options for states that have the potential to make a meaningful difference in the lives of consumers and families.

The pharmaceutical industry is raising prices for prescription drugs while many American families who are already unable to afford their medications are losing their jobs and health insurance.

Nearly three in 10 adults — approximately 80 million people — in the U.S do not take their medicine as prescribed due to high costs.⁷ One in 10 adults either cut their pills in half or skip dosages in order to prolong the supply of medication they can afford,⁸ while one in five adults forgo their essential medications entirely because they are unable to afford to fill their prescription.⁹ Since the outset of 2020, drugmakers announced further price increases averaging triple the rate of inflation for more than 500 drugs.¹⁰

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Today, several months into the pandemic, our nation is still coming to terms with the full impact of COVID-19. Between March 15 and May 9 of this year, an estimated 16 million workers lost comprehensive health insurance formerly provided by their employers.¹¹ This massive loss of work and coverage has resulted in losses to the livelihood of families across the nation. In the early days of this crisis, the U.S. Census Bureau found that 26 million families did not have enough food to eat during the week,¹² and 38 million adults reported little or no confidence in their ability to pay the next month's mortgage or rent.¹³ It's clear that the COVID-19 pandemic is wreaking havoc on every aspect of families' lives, from their ability to access stable employment and health care to other basic needs.

At the same time American families are suffering, drugmakers have taken steps to raise the prices of 245 drugs on the market. Of those drugs, 75% are in use for COVID-19 clinical trials, tied to outcomes and treatment for COVID-19, or used to treat conditions that put people at higher risk of infection.¹⁴

The drug industry has failed to invest in research and development that could have better prepared us for the COVID-19 pandemic.

The current incentives for pharmaceutical development have failed to prepare the world for COVID-19, despite decades of warning signs from coronavirus outbreaks with MERS (Middle East respiratory syndrome) and SARS (severe acute respiratory syndrome) about the devastating effects of a pandemic and the importance of having potential pharmaceutical remedies at the ready.¹⁵ Despite windfall profits for the past decade, the drug industry invests more funds into marketing its products than it does inventing new medicines.¹⁶ In 2017, drugmakers spent only 22% of their revenue on research and development,¹⁷ missing a critical opportunity to prepare for a global pandemic.

Instead of developing vaccines or cures to help our nation prepare for future coronaviruses or other emerging diseases, drugmakers have invested in minor tweaks to existing medicines. In fact, eight in 10 newly filed patents for drugs are for modest changes to existing medicines, not new medicines.¹⁸ This lack of innovation and investment has not only slowed the development of new, cutting-edge treatments, it has also resulted in significant lag times to develop medicines to treat emergent threats like COVID-19.

Despite funneling taxpayer dollars into pharmaceutical companies to invest in drug development, there is no guarantee that any resulting therapy or vaccine will be affordable or available to consumers.

Today, as COVID-19 relief packages make their way through Congress, drugmakers are breaking lobbying records¹⁹ as they press Congress to continue the cycle of providing billions in taxpayer support for research and development without any requirement to ensure that consumers and families share in the benefits of these investments. Recognizing the important role that pharmaceutical companies play in addressing the pandemic, policymakers have prioritized funding for the industry. For example, the Coronavirus Preparedness and Response Supplemental Appropriations Act²⁰ and the Coronavirus Aid, Relief, and Economic Security Act²¹ have allowed nearly \$8 billion to flow into drug development, granting many fast-moving contracts with drugmakers. Yet, none of the moving COVID-19 congressional packages have included significant protections or provisions around prescription drug affordability, not even when new medications for the treatment of COVID-19 become available. Further, while federal lawmakers have passed legislation to

provide trillions in COVID-19 relief, they have only included narrow provisions in recent legislation to provide cost-sharing assistance for COVID-19 treatments and vaccines, which is not a sustainable solution to ensuring long-term affordability of the treatments families need to survive.

The White House has also focused on the importance of prescription drugs in the pandemic. In April, President Donald Trump announced a rapid scale-up of research for a COVID-19 vaccine in an initiative called Operation Warp Speed, with the goal of finding a vaccine by January 2021.²² In July, Trump issued three executive orders aimed at cutting prescription drug prices, but they fall short of allowing direct negotiation to lower Medicare drug prices. This latest support from Congress and the administration is on top of taxpayer-funded industry research from 2010 through 2016, which helped pay for the development of every one of the 210 drugs approved by the U.S. Food and Drug Administration during that time.²³

The failure of federal policymakers to help consumers manage the impact of COVID-19 on prescription drug prices is proving dangerous to families impacted by the pandemic. Pharmaceutical companies are already increasing prices for drugs that have the potential to treat COVID-19 symptoms.²⁴

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States should not wait for solutions from Washington. States should lead by advancing policies that put consumers first.

Despite the serious concerns among consumers about the cost of prescription drugs, there has been no federal legislative or regulatory activity to protect consumers from price gouging. To date, only one pharmaceutical company has promised to make COVID-19 vaccines and therapeutics available during the pandemic on a “not-for-profit” basis.²⁵ State lawmakers must respond to consumers’ calls for protection from high drug prices during the COVID-19 pandemic. **The time to act on meaningful drug pricing legislation is now.**

Lowering prescription drug prices is a priority for voters across the country. Nearly nine in 10 voters across the nation want the government to negotiate lower prescription drug prices with drug manufacturers,²⁶ and state-level polling shows similar levels of support.²⁷ Seventy-five percent of voters view elected officials who do not support legislation lowering prescription drug prices as less favorable.²⁸ However, consumers should not be the only ones who care about this issue. High prescription drug prices also negatively affect state and federal budgets.²⁹

The good news is that advocates don’t have to wait for Congress. State lawmakers can take immediate action to address this problem. States across the nation — including Arizona, Illinois, Maryland, Minnesota, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont — have taken up legislation to ensure the availability of affordable medications and protect consumers from

price gouging. State lawmakers should consider the following policy solutions to take action:

- » **Set annual limits on price increases:** After a prescription drug comes to market, prescription drug manufacturers often increase the price year after year. To limit annual price increases, states can enact legislation that fines drugmakers for price increases that exceed a set threshold.³⁰ In Illinois, legislation proposed in 2019 took this approach to curbing excessive price increases. For states currently struggling to balance their budgets in response to COVID-19, this proposal could generate revenue for patient assistance or other programs, while also discouraging annual price increases.
- » **Establish a Prescription Drug Affordability Board:** States can also limit the amount paid for a drug within its borders by implementing a Prescription Drug Affordability Board,³¹ which assesses the affordability of expensive drugs across the state and sets an upper payment limit for those drugs that otherwise are not accessible. In turn, savings go directly to consumers, small-business employers, and state taxpayers through reducing overall health insurance premiums.³²
- » **Incentivize state agency collaboration:** State agencies can work with one another to collaborate on prescription drug purchases. In this approach, a state pools resources across state-level agencies in order to obtain prescription drugs and secure bulk discounts.³³ Since public payers and government systems purchase prescriptions, costs are lower, which results in state-level, and potentially private sector, savings.³⁴

State lawmakers have a variety of options they can pursue to protect consumers from high and rising drug prices.

State lawmakers have a variety of options they can pursue to protect consumers from high and rising drug prices. Families USA has highlighted many of these options, along with strategies to counter industry opposition, in previous publications, such as [“Addressing the Prescription Drug Affordability Crisis: A Golden Opportunity for State Lawmakers.”](#)³⁵

Conclusion

The time to pass meaningful prescription drug pricing legislation is now. While progress is stalled at the federal level, there are opportunities for states to act. At a time when families are experiencing historic job

and coverage losses, and fear and uncertainty related to COVID-19, it is imperative that state lawmakers take advantage of proven models that have already been advanced in states and similarly prioritize the health of America’s families over the profit margins of the pharmaceutical industry. Choosing not to implement reforms and reign in prescription drug costs, especially in the middle of a pandemic, is unconscionable. Lawmakers have solutions that will protect consumers from abusive prescription drug prices and still create new opportunities to invest in the treatments and cures we need. Now is the time to put the needs of consumers first.

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