

***RE: The Prescription Drug Price and Supply Chain Transparency Act of 2023***

March 17, 2023

Honorable Andrea Stewart-Cousins  
Senate Majority Leader  
907 Legislative Office Building  
Albany, NY 12247

Honorable Carl Heastie  
Speaker of the Assembly  
932 Legislative Office Building  
Albany, NY 12248

Dear Majority Leader Stewart-Cousins and Speaker Heastie:

Thank you for your past leadership in standing up for millions of New Yorkers and working to make prescription drugs more accessible and affordable.

As budget negotiations proceed, we respectively request you include in the final 2023-24 state budget **Part Y Subpart B Article 30 “*The Prescription Drug Price and Supply Chain Transparency Act of 2023*” in the Health and Mental Hygiene Article VII** budget legislation proposed by the Governor to increase prescription drug price transparency.

Our organizations were very encouraged to see that the Senate one-house budget proposal accepted the majority of the Governor’s prescription drug price transparency language. We sincerely hope the Assembly will be supportive at the budget table as the process moves forward.

List prices on more than **1,200 prescription drugs rose by an astounding 31.6% on average - far higher than the general rate of inflation - between July 2021 and July 2022**, according to a new report from the U.S. Department of Health and Human Services (HHS).<sup>1</sup> In addition, a recent AARP national survey of registered voters 50 and older found cost is the primary reason for deciding not to fill a prescription.<sup>2</sup>

The Governor’s proposal represents one of the most comprehensive prescription drug price transparency initiatives in the nation as it combines far-reaching drug price increase reporting requirements with mandatory disclosure of “pay for delay” agreements, which keep consumers from accessing cheaper generic versions of drugs for 17 months on average, according to the U.S. Federal Trade Commission (FTC).<sup>3</sup>

Manufacturers would be required to report their planned price increases to the Department of Financial Services (DFS) well in advance to help consumers prepare for any potential rise in drug costs at the pharmacy counter and to arm them with the information they need to choose the best health plan for their particular needs. The leading cause of the rise in health care premium

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<sup>1</sup> Arielle Bosworth, et al. “Price Increases Prescription Drugs” (2022). Available at: <https://aspe.hhs.gov/sites/default/files/documents/d850985c20de42de984942c2d8e24341/price-tracking-brief.pdf>

<sup>2</sup> AARP Research “Consumer Views on Prescription Drugs Survey” (2021). Available at [https://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/health/2021/drug-prices-older-americans-concerns.doi.10.26419-2Fres.00476.001.pdf](https://www.aarp.org/content/dam/aarp/research/surveys_statistics/health/2021/drug-prices-older-americans-concerns.doi.10.26419-2Fres.00476.001.pdf)

<sup>3</sup> Federal Trade Commission, “Pay-For-Delay: How Drug Company Pay-Offs Cost Consumers Billions” (2010). 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>

costs is the increase in prescription drug prices. Under the Governor’s proposal, New York would be empowered to investigate manufacturers’ assertions as to reasons for increases, building upon the authority you granted to DFS in 2020 to investigate price spikes.

Already, 19 states have enacted over 26 drug transparency laws. Vermont, the first such state to do so, reported an almost 80% decline in the number of drugs with price increases of at least 15% in its Medicaid program between 2016 and 2020. Oregon’s transparency law resulted in 70% fewer reports of price increases over their threshold of 10% or higher for drugs priced at \$100 or more between 2019 (the program’s first year) and 2020.

The second piece in the Governor’s proposal would require reporting of “pay-for-delay” agreements between brand name drug manufacturers and generic manufacturers. A pay-for-delay agreement is an arrangement between a brand name drug manufacturer and a competing generic drug manufacturer by which the generic drug manufacturer agrees to delay the release of a generic equivalent drug in exchange for something of value from the brand name drug manufacturer.

These pay-for-delay agreements provide financial benefits to drug manufacturers at the expense of consumers: the brand-name manufacturer can continue to charge monopoly prices, and the generic company is compensated for its inaction.

The FTC report has estimated that pay-for-delay agreements cost American consumers \$3.5 billion per year but a 2021 Columbia Science and Technology Law review article found the cost could be as high \$37 billion annually.<sup>4</sup> Delaying generic drugs market entry for an average of nearly 17 months means consumers must continue paying brand-name drug prices, rather than the prices of their generic drug counterparts, which can be as much as 85% lower.

Our organizations strongly believe The Prescription Drug Price and Supply Chain Transparency Act of 2023 would shine a light on the ever-increasing prices of prescription drugs, which impact consumers filling their prescriptions and paying insurance premiums, as well as all New York taxpayers, who underwrite New York State’s \$9 billion pharmacy budget.

This transparency would not only provide important information about prescription drug prices but could change behavior to the benefit of all New Yorkers. For the above reasons, we the undersigned respectively request prescription drug price transparency language be included in the final 2023-24 state budget.

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<sup>4</sup> Robin C. Feldman, “The Price Tag of “Pay-for-Delay”, 23 Colum. Sci. & Tech. L. Rev. 1 (2022). Available at: [https://repository.uhastings.edu/faculty\\_scholarship/1866](https://repository.uhastings.edu/faculty_scholarship/1866)