Testimony of the National Academy for State Health Policy in Support of LD 1117 An Act to Prevent Excessive Prices for Prescription Drugs

Senator Sanborn, Representative Tepler and distinguished members of the Health Coverage, Insurance and Financial Services Committee, my name is Jennifer Reck and I am the Project Director for the Center for Prescription Drug Pricing at the National Academy for State Health Policy (NASHP). NASHP is a non-partisan forum of state policy makers that works to develop and promote innovative health care policy solutions at the state level. In 2017 NASHP created its Center for Drug Pricing to focus attention on steps that states can take to tackle the spiraling costs of prescription drugs and the impact it has on consumers, the overall cost of health care and state budgets.

At NASHP we believe that when it comes to health care, the states are a tremendous source of innovative ideas and solutions. We approach our work by engaging and convening state leaders to solve problems. We conduct policy analysis and research and we provide technical assistance to states. NASHP's Center for Drug Pricing develops model legislation for states and provides technical assistance and support to legislators and executive branch leaders who wish to move them forward. When these bills pass, NASHP continues to support states as they are implemented.

The bill before the Committee today, LD 1117, is based on a model bill that NASHP released last summer.

As we know dramatic annual increases in the price of prescription drugs are a significant driver in the unsustainable cost of health care for Americans. Sometimes price increases can arguably be justified by changes in the market, or an increase in the cost of production or by a reassessment of the clinical value of the product. But in many cases, they are not. Often drug companies raise their prices on life-sustaining products simply because they can and because they know that in a market that does not effectively regulate price that they can get away with increasing prices at a rate that far exceeds inflation.

There are a number of examples spikes in the prices of generic drugs, some of them notorious. We all remember the outcry in 2015 when Turing Pharmaceuticals raised the price of Daraprim from $13.50 to $750 per pill. But this isn't the only egregious example:

- In January 2019 Fluoextine, a generic version of the antidepressant Prozac, jumped from $9 per bottle to $69, an increase of $60 or 667 percent;
- In February 2019 Guanfacine, a generic treatment for high blood pressure and ADHD, jumped from $29 to $87 per bottle, an increase of $58 or 204 percent; and

- In April 2019 Azacitidine, a generic version of the chemotherapy drug Vidaza, jumped from $105 to $210 per vial, an increase of $105 or 100 percent.

LD 1117 would make these and similar examples of price gouging illegal. Specifically, generic or off-patent drugs with price increases over 15% in a year, or over 40% in three years, would be referred to the state Attorney General for investigation. If found to have engaged in price-gouging, a company would have to roll back the inflated prices and pay back their profits from price gouging – either directly to consumers when possible, or to the state for consumer relief.

As the committee may be aware, a previous price-gouging bill enacted in Maryland was struck down by the Fourth Circuit. When NASHP created the model act upon which LD 1117 is based it worked with a team of legal experts (including a former Maryland Assistant Attorney General who worked on the original case) to address the specific points of law raised by the court. To that end, this bill includes language making it clear that it applies to in-state transactions only, in order to avoid violations of the dormant commerce. It also requires drug wholesalers to maintain a registered agent in-state. It designed to be very specific in scope to avoid any challenge based on vagueness. It is designed to apply only to generic and off-brand drugs in order to avoid any possible argument that the limit on price increases infringes the owner of any patents.

As the Committee continues its work on this bill NASHP is available to support your work as necessary. As described above, NASHP engaged with a team of legal experts to design legally sound approaches that can withstand the inevitable challenges from manufacturers and their allies. In order to support the work of states, NASHP has made our legal analysis available on our website. The NASHP website also contains other materials (Written Q&A, Blog Articles, etc.) that may be useful material for the Committee. Thank you.

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