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Maryland Politics

# Maryland weighs new approach to curbing prescription drug costs

By Josh Hicks February 16

A Maryland bill that would make the state a national test case for controlling prescription drug costs has garnered broad legislative support in Annapolis but could put the state on a legal collision course with the pharmaceutical industry.

The proposal, introduced by Sen. Joan Carter Conway (D-Baltimore City) and Del. Joseline A. Peña-Melnyk (D-Prince George's), would create a commission to decide the maximum amount that health plans, pharmacies and state programs could shell out for the most expensive brand-name and patented medications. The state has a similar rate-setting commission that determines how much hospitals can charge for their services.

The bill's goal is to rein in the skyrocketing cost of pharmaceuticals without running afoul of U.S. patent law, which allows drugmakers to hold a monopoly and pricing advantage for years after they patent a new medication.

Federal courts struck down a D.C. drug-affordability law passed in 2005 that allowed residents to sue drugmakers whose prices were at least 30 percent higher than in Canada, Australia, Germany and the United Kingdom.

Advocates for the Maryland bill, including state Attorney General Brian E.

Frosh (D), say it could survive such legal challenges because it addresses how much can be paid for medications — rather than how much can be charged for them.

“You have this patent law that says patent holders can charge whatever they want for 17 years, in effect, but that’s a different question from whether people pay it,” Frosh said.

But other legal experts were skeptical.

“This legislation looks like it’s essentially saying to patent holders that there’s a certain amount we just won’t allow you to charge,” said Christopher May, a patent attorney who teaches law at the University of Maryland. “There’s a pretty strong argument that Maryland is going to have the same sort of problems that D.C. had.”

The measure has more than enough House sponsors to pass in that chamber, but is one sponsor shy of a majority in the Senate. It is a top priority of the powerful Legislative Black Caucus, whose members say they hear frequently from constituents about the high price of prescription drugs, and has been unanimously endorsed by the Montgomery and Prince George’s county councils and the Annapolis and Baltimore city councils.

Nationally, 74 percent of Democrats and 71 percent of Republicans support allowing an independent group to oversee prescription-drug pricing, according to [a 2017 survey from the Kaiser Family Foundation](#).

“A lot of people have to choose between buying food, paying rent or their prescribed medications,” Peña-Melnyk said. “At what point are the profits enough? You look at how much the prices of drugs have gone up over the years and it’s shocking.”

Gov. Larry Hogan (R) has not taken a position on the legislation.

Pharmaceutical industry groups note the high research and development

costs to bring new drugs to market, and say price controls diminish the incentive for drug companies to invest in innovative medicines.

“If we truly want to help Maryland families, we shouldn’t recycle more failed ideas, but should instead start a conversation to tackle the underlying problems patients face every day at the pharmacy counter,” said Caitlin Carroll, a spokeswoman for Pharmaceutical Research and Manufacturers of America.

Several states, including California, New York and Vermont, require drugmakers to disclose how their products are priced when the costs have risen dramatically. But none has created a rate-setting commission similar to the one Maryland lawmakers have proposed.

“Other states are paying attention to what we’re doing in Maryland,” said Larry Zarzecki, a resident of Chester, Md., who suffers from Parkinson’s disease and has been pushing lawmakers to support the bill. “Hopefully this becomes groundbreaking and other states follow suit.”

Greg Dolin, a University of Baltimore law professor, said the bill could cause drug companies to halt Maryland sales of affected products. “The whole point of a patent is that it gives exclusive rights to an invention, including the right not to sell it at all,” he said.

Prescription-drug spending nationwide jumped nearly 9 percent in 2015 and more than 12 percent in 2014, according to [data from the U.S. Centers for Medicare and Medicaid Services](#). Although growth slowed to 1.3 percent in 2016, the most recent year for which data is available, it is projected to increase over the next decade by [an average of 6.3 percent a year](#).

John O’Neil, a 60-year-old resident of Salisbury, Md., living on about \$36,000 a year from disability checks and his pension from a baking company, struggles to pay for a blood-thinning medication he needs for an irregular heartbeat. At times, he substitutes aspirin for the brand-name drug, which costs him more than \$4,000 a year beyond what his Medicare plan will

cover.

“It shouldn’t be like this on Medicare,” he said. “We’re living week to week.”

Zarzecki, a retired state trooper, lives on about \$38,000 a year from his pension. The 55-year-old can’t afford the latest Parkinson’s drugs, which would cost him about \$3,800 a month out of pocket. Instead he takes a combination of nine less-effective medications that cost him about \$800 a month.

“I can’t afford the best drugs on the market, even with my insurance, and I have good insurance,” Zarzecki said.

Advocates for the Maryland bill say their plan complements a 2017 law that gave Frosh authority to sue manufacturers and distributors of generic and off-brand drugs for “excessive” and “unconscionable” price increases.

Hogan allowed it to become law without his signature. The governor said he wanted to prevent price-gouging but had concerns about the constitutionality of the measure and its exemption of patented and brand-name drugs.

The Association for Accessible Medicines, which represents manufacturers of generic drugs, sued to block the 2017 law on grounds that it violated the Constitution’s interstate-commerce and due-process clauses. The legal case is pending, but a federal judge allowed the statute to take effect in October.

The proposed rate-setting bill would require drug manufacturers to notify the state when they plan to introduce a patent-protected drug that costs more than \$30,000 per treatment cycle or year, or when they increase the price of an existing drug by either 10 percent or \$10,000 within a year. In such cases, a commission would determine whether the rates are warranted and, if it concludes they are not, cap the price that can be paid.


Seventy-nine lawmakers in the 141-member House have signed on to the bill, including a majority of the 23-member Health and Government Operations

Committee, which will determine whether the measure advances to a floor vote.

The legislation is one sponsor short of a majority in both the 11-member Senate Finance Committee and the 47-member Senate. Sen. Brian J. Feldman (D-Montgomery), chairman of a subcommittee that will review the bill and whose district includes part of the state's Interstate 270 biotechnology corridor, said the legislature needs to carefully consider whether the measure might have unintended consequences.

But Del. Patrick L. McDonough (Baltimore County), one of two Republicans who has sponsored the measure, said he believes the state should act. "All the time I hear complaints about the cost of drugs," he said. "You can't have a conversation with a senior without hearing that."

 **2 Comments**

Josh Hicks covers Maryland politics and government, focusing on the governor and state legislature. He previously anchored The Washington Post's Federal Eye blog, focusing on federal accountability and workforce issues.  Follow @reporter\_hicks

