Horvath Health Policy

*Innovations in Healthcare Financing Policy*

PO Box 196, College Park, MD 20741 202/465-5836

horvathhealthpolicy@gmail.com

**Testimony of Jane Horvath on SB759/HB768**

Thank you for the opportunity to speak today about SB759/HB768 which would create a Prescription Drug Affordability Board in Maryland. I have worked with state officials on prescription drug cost containment policy for three years. I developed the model act that is the basis for the bill we are discussing today. The model act is the basis of legislation pending in seven other states.

**Why a Prescription Drug Affordability Board?**

The Prescription Drug Affordability Board (PDAB) is one of the very few ways states can address the costs of prescription drugs. As you all well know, there is federal law and caselaw that has severely limited state policy options to constrain drug costs. Although the pharmaceutical industry will challenge any state policy innovation about drug costs, I believe that a PDAB will surmount legal challenges. Patent law experts and dormant commerce clause legal scholars have reviewed the approach for vulnerabilities.

*A PDAB Will Increase Sales of Costly Drugs*

I think it is important to know that a PDAB is designed to *increase sales* of costly drugs. If drugs are less costly, insurers can more freely cover them without restrictions and without shifting costs to the patients – which insurers must do now to constrain growth in premiums (insurer premiums and premium increases are regulated). The PDAB is not designed to cause revenue loss for manufacturers. There is no reason to think that selling more drugs at a lower reimbursement will create less revenue than fewer sales of the product at a higher cost.

*PDAB Action Reduces the Need for Manufacturer Rebates*

Also, the PDAB should cause back room rebates to diminish. If pharmacies get a product at less cost, insurers reimburse the pharmacy at the lower cost. Rebates are designed to lower insurer net spending on a drug when the insurer’s pharmacy reimbursement is high because the pharmacy’s costs to stock the drug is high. An upper payment limit will create discounts in the supply chain including pharmacies, so rebates will not be needed.

The mantra of the drug industry for the last five years or so has been that they get no credit for all the rebates they pay. And that is quite true. Manufacturer rebates will become discounts – transparent discounts that travel through the supply chain to the pharmacy and the patient. Manufacturers will get the benefit of better public relations when drugs are no longer unaffordable. So, the PDAB should be considered a win for the industry not an unbearable loss.

At its core, a PDAB will rearrange the flow of funds, and create up front discounts. Up-front discounts benefit patients when they pay for drugs. Back end rebates never benefit the patient although rebates are important to offset insurer costs and relieve some upward pressure on premiums.

*A PDAB is in the Tradition of State Oversight of Consumer Costs of Essential Services*

The PDAB is modeled on the Maryland Health Services Cost Review Commission (HSCRC). The PDAB is also modeled on how every state regulates the consumer cost of essential public services. Public services like water and gas are essential to health and safety – as are prescription drugs. Clean water is incredibly valuable, but state oversight makes clean drinking water affordable to Marylanders. Prescription drugs are very valuable too but they are not affordable to Marylanders today.

**How the PDAB Would Work**

The PDAB will obtain public input on whether a costly drug creates financial stresses for the Maryland heath care system and individual Marylanders. If there is a general consensus that there may be an affordability issue, the PDAB will undertake a review.

Submitting information to the PDAB is completely voluntary for every stakeholder. The PDAB will keep proprietary data confidential. Payers, purchasers, patients and manufacturers have every incentive participate.

The PDAB will look at insurer net costs for the drug (including rebates and other price concessions) and net costs for therapeutically similar (competitor) drugs. The PDAB will have to understand how many Marylanders should be taking the drug and what that would cost at market rates. The PDAB could decide to limit the cost of the drug in Maryland using the decades old US health system method of setting upper payment limits for services, drugs and devices.

There is nothing new in the mechanism the PDAB will use, the PDAB will unify the strength of payers, suppliers and pharmacies to negotiate discounts. Exactly what happens across the US every day, but Maryland payors and purchasers have the force of law behind them. Acting independently, health plans and pharmacies do not have market leverage to negotiate. The PDAB creates that market leverage in Maryland. The PDAB process makes discounts public and included in every financial transaction for the drug in the state, from suppliers to dispensers to patients.

**Transparency Does Not Lower Drug Costs**

While many states are legislating transparency for insurers and pharmacy benefit managers (pbms), this transparency will not reduce costs to consumers or payers. I am testifying tomorrow in the US Senate on the issue of transparency – what it will and will not accomplish. In preparing for that testimony, I realize that there are more state bills that would require insurer and pbm transparency while not requiring transparency from pharmaceutical manufacturers. This type of transparency bill is also pending in Maryland as well. Transparency from insurers and pbms will not reduce the cost of prescription drugs. A PDAB moves us beyond transparency.

**The PDAB is Now in the Mainstream of Policy Thinking**

The PDAB is not the radical idea it might have seemed two years ago. The Trump administration has proposed a number of far more radical ideas that validate the merits of the PDAB approach:

* + Drug rebates in Medicare will be classified as kickbacks under federal law and no longer permitted in Medicare Part D.
  + Medicare Part B drug reimbursement will be tied to the lower drug prices in Europe and elsewhere.

These are stunning ideas. Importantly *a Maryland PDAB is completely consistent and complementary to the ideas of the Trump Administration.* The PDAB will not outlaw rebates but will make them unnecessary for drugs that have an upper payment limit.

The PDAB may not look at US market prices in setting a Maryland upper payment limit which is consistent with the Medicare proposal that delinks federal reimbursement from US manufacturer prices.

Like PDAB, the Trump Administration intends that the industry paradigm move away from unaffordably high prices partially offset by secret rebates and move to a more transparent system of discounts that make the drugs affordable for providers, pharmacies and patients – which then benefits insurers and state programs.

Thank you for your time and consideration.