**Prescription Drug Affordability Board (PDAB)**

**Addressing PhRMA Scare Tactics**

***Scare Tactic #1: A PDAB will deny people access to prescription drugs.***

*Reality:* The PDAB will exist *to improve access* to expensive drugs – making them more affordable for public and private health plans and enrollees, public health, other state, county, and local agencies, and the uninsured. Medicaid claims payment spending would reduce, and even in-state Medicare drug costs could decline.

***Scare Tactic #2:*** **There will be shortages of drugs when they are made affordable because drug companies will not sell once a drug is affordable.**

*Reality:* The prescription drug industry scares people with threats of retaliation that would directly punish patients. That would be outrageous behavior and it is an outrageous threat.

We know that pharma companies have increased spending over the years on manufacturing, as well as research and development in Canada, Europe, and Japan all of which control drug costs at the national level. Yet, industry is willing to punish US patients if a PDAB is created. Again, it is outrageous that the industry will refuse to sell/refuse to increase their sales volume for the sake of the principle that no one may increase access to drugs by making the drugs more affordable. This kind of industry behavior tells us everything we need to know about the industry policy priorities. Additionally, any company will have to think hard about hurting their reputation while ceding market share to competitor companies.

***Scare Tactic #3:*** Pharma will lose money on sales to PDAB states and when they lose money, they cannot do research and development causing patients to suffer.

*Reality:* Even the World Health Organization has started to look at drug prices because drugs are so quickly becoming unaffordable everywhere in the world. The WHO finds that, on average, a drug company earns $14 for each $1 in cancer drug R&D. Academic researchers are starting to find that the industry greatly overstates how much money it takes to bring a drug to market, based on company reports to the US Securities and Exchange Commission. There are also new indications that fewer drugs fail/more drugs succeed in development because of new approval pathways and the evolution of science. These same factors are lowering costs of bringing a drug to market.

Additionally, the US government funded the development of Covid 19 vaccines – research, clinical trials, paying for production of glass vials and even vaccine manufacturing – for all current on-market vaccine companies except Pfizer. A PDAB will set upper payments for only the costliest drugs, balance the need of manufacturers for revenue and the needs of state residents to be able to pay for the drugs they need, and use the upper payment limit to Increase sales of drugs relative to the sales volume that would exist if the drug were not affordable.

**Scare Tactic #4: The industry will sue for violations of the dormant commerce clause and/or patent law.**

*Reality:* The PDAB with upper payment limit authority is designed to withstand a challenge that a state is unlawfully regulating interstate commerce. A PDAB regulates payments and reimbursement rates for state-licensed entities. The model is constructed to avoid all the problems Courts have found with other state regulatory actions. Additionally, the recent US Supreme Court decision (Rutledge v PCMA) found that rate regulation is a well-established role of state government and in-state rate regulation cannot be construed to violate the ERISA preemption because rate regulation does not affect an ERISA plan’s core busines of benefits and coverage – even if the rate regulation were to raise the costs of operation. The Rutledge decision addresses many of the same issues about which the pharmaceutical industry would try to sue using the dormant commerce clause and regulation of interstate business operations.