STATEMENT

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In Opposition to Oregon SB 192 B
June 21, 2023

Position: PhRMA remains opposed to SB 192 B – a premature bill that expands the work of the Prescription Drug Affordability Board despite the fact that the Board is only just beginning to exercise its existing authority.

PhRMA believes that discussions about the affordability of medicines are important, but the "plan for establishing upper payment limits" as written in SB 192 does not consider patient out of pocket expenses or underlying plan designs that impact patient costs. While the plan jumps to implementation, there is no evidence to support a UPL as an effective way to lower drug costs for patients. Price controls on brand medications could threaten the competitive market and have the potential to result in greater costs to the state, the federal government, and consumers. While three states have passed laws that would allow them to set a UPL for certain medicines, no state has implemented a UPL to date.

SB 192 B, and the underlying statute, continues to raise concerns with respect to the treatment of manufacturers' trade secret, confidential, and proprietary information. While additional PBM and health plan reporting in SB 192 B would improve data transparency, PhRMA believes that additional supply chain entities should also bear the cost of paying for the Prescription Drug Price Transparency Program and PDAB. And finally, we remain concerned that this bill does not address underlying barriers to accessing healthcare and could result in greater costs to the state, the federal government, and consumers.

Additional supply chain entities should bear the cost of paying for the Prescription Drug Price Transparency Program and Prescription Drug Affordability Board.

SB 192 B expands the scope of reporting on prescription drug spending to the Prescription Drug Price Transparency Program and Prescription Drug Affordability Board would be expanded to require additional reporting from other supply chain entities like pharmacy benefit managers (PBMs) and health plans. PhRMA supports this effort, as those entities significantly influence the ultimate price that a patient pays for a medicine. PBMs hold themselves out as the only part of the supply chain devoted to lowering drug costs, supposedly negotiating "fair deals" for their health insurer and employer clients and for the patients enrolled in those plans, agnostic to how to achieve the lowest net cost. However, PBMs have a vested interest in benefit administration because the rebates and/or fees they receive are usually tied to the price of a medicine. Experts have noted that this dynamic creates misaligned incentives that may lead to PBMs favoring medicines with higher prices and larger rebates.[1] In fact, non-manufacturer stakeholders—including PBMs, health plans, hospitals, the government, pharmacies, and others—realize the majority of total spending on brand medicines. In 2020, manufacturers retained just 49.5% of brand medicine spending, while members of the supply chain retained 50.5%.[2]

The implementation and operation of a prescription drug affordability boards is resource intensive and requires the state to assume significant upfront and ongoing costs. The additional supply chain reporting contemplated in SB 192-2 would increase the costs to run the Drug Price Transparency program and the PDAB, which is to be funded by

[1] Motheral BR, Fairman KA. Changes in PBM Business Practices in 2019: True Innovation or More of the Same? Journal of Managed Care & Specialty Pharmacy. 2016;26(10):1325-1333. https://doi.org/10.18553/jmcp.2020.20213.
[2] BRG: The Pharmaceutical Supply Chain, 2013-2020. January 2022.

fees assessed on drug manufacturers.[3] The Board has just begun its work to establish a framework for conducting affordability reviews, which will be a time consuming, data heavy, and costly endeavor. The resource intensive nature of this process has been demonstrated in other states. Colorado requested $260,000 for FY 2023-24 for ongoing consulting and data access services to assist the Board in conducting affordability reviews in addition to the $515,479 already allocated to the Board for the fiscal year.[4]

In Maryland, the PDAB is funded through fees assessed on all supply chain entities including manufacturers, wholesale distributors, PBMs, and plans.[5] Since the bill recognizes the role these entities play in the ability for patients to afford their prescription drugs by extending transparency reporting to those entities, those entities should also be responsible for paying fees to run these programs.

Additional protections are necessary for manufacturers' trade secret, confidential, and proprietary information.

Some of the technical changes in this proposal may implicate manufactures' trade secret, confidential, or proprietary information. PhRMA is concerned that, without adequate safeguards to protect against the disclosure of such information, these changes would create a serious and unjustified risk of disclosure, which would cause irreparable harm to manufacturers and violate their rights both under state and federal law. We remained concerned that ORS section 646A.689 itself could be construed to require the disclosure of confidential, proprietary, or trade secret information in violation of state and federal rights. Most notably, subsections (9) and (10)(a) purport to require the Department to post manufacturers' trade secret information to its website unless "[t]he public interest does not require disclosure of the information. It does not provide any express mechanism for a manufacturer to challenge a decision to disclose such information, including in instances where disclosure is deemed to be "in the public interest."

Disclosing manufacturers' trade secret information whenever Department of Consumer and Business Services deems disclosure to be in "the public interest" would violate both state and federal law. Both Oregon and federal law protect manufacturers' trade secret, confidential, and proprietary information from disclosure; such information cannot be publicly disclosed without violating state and federal prohibitions against the "misappropriation" of trade secrets.[6] The Fifth Amendment's prohibition against taking private property without just compensation similarly prohibits the uncompensated disclosure of trade secrets.[7] Courts have made clear that "when disclosure [of pricing information] is compelled by the government," even the "failure to provide adequate protection to assure its confidentiality . . . can amount to an unconstitutional 'taking' of property."[8]

SB 192 B fails to address most patients' barriers to accessing care, particularly the costs patients pay at the pharmacy counter.

This legislation does not address benefit designs that continue to push more cost-sharing onto patients and which determine how much patients pay out-of-pocket for their drugs. Patients that currently have deductibles will still be required to meet those deductibles if no changes are made to health benefit designs. PhRMA is increasingly concerned that the substantial rebates and discounts paid by pharmaceutical manufacturers to plans and PBMs,

[3] SB 844 (2021) appropriated $1,786,192 to DCBS for startup costs of the PDAB for the 2021-23 biennium. Fiscal impact statements of the legislature state that the PDAB will reimburse the GF for startup costs after sufficient manufacturer fees have been established.
[4] Colorado Department of Regulatory Agencies (DORA). Joint Budget Committee Staff FY 2023-24 Budget Briefing Summary. https://leg.colorado.gov/sites/default/files/fy23-24_regbrfsum.pdf
[5] Section 21-2C-11 of the Health-General Article, Annotated Code of Maryland, directs the Maryland Prescription Drug Affordability Board to assess manufacturers, distributors, carriers and pharmacy benefits managers an annual assessment to fund the Prescription Drug Affordability Fund. By regulation, COMAR 14.01.02, the assessment is $1,000 per year. https://pdab.maryland.gov/documents/FY23_FAQ.pdf
[6] *See* 18 U.S.C. § 1839(5)(B)(ii)(II) (defining "misappropriation" under the federal Defend Trade Secrets Act); ORS 646.461(4) (defining "misappropriation" under Oregon's Uniform Trade Secrets Act).
[7] *See*, e.g., Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1002–04 (1984).
[8] St. Michael's Convalescent Hosp. v. California, 643 F.3d 1369, 1374 (9th Cir. 1981) (brackets and quotation marks omitted).

approximately $236 billion in 2021,[9] do not make their way to offsetting patient costs at the pharmacy counter. Yet, despite manufacturers' rebates and discounts negotiated by health plans that have kept net price increases below inflation for the last five years, nearly half of commercially insured patients' out-of-pocket spending for brand medicines is based on the medicine's undiscounted list price.[10]

PhRMA recognizes the serious access challenges faced by patients in Oregon. Patients need concrete reforms that will help lower the price they pay for medicines at the pharmacy, such as making monthly costs more predictable and sharing negotiated savings on medicines with patients. However, **this legislation fails to address patient access and affordability and will only serve to create barriers to innovation.** PhRMA stands ready to work with the legislature to develop solutions that help patients better afford their medicines at the pharmacy counter.

PhRMA opposes SB 192 B for the above stated reasons.
Please vote 'No' on SB 192 B.

About PhRMA

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than $1.1 trillion in the search for new treatments and cures, including $102.3 billion in 2021 alone.

[9] Fein, A. "The 2022 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers," Drug Channels Institute. March 2022.
[10] IQVIA Institute for Human Data Science. Medicine spending and affordability in the United States. Published August 2020. Accessed August 2020. https://www.iqvia.com/insights/the-iqvia-institute/reports/medicine-spending-and-affordability-in-the-us.