Testimony in Support of
Senate Bill 442: An Act Prohibiting Predatory Pricing of Pharmaceuticals
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March 7, 2017

My name is Ted Lee. I am a student at Yale Law School, and a senior fellow of the Global Health Justice Practicum, a course run by several Yale faculty who lead the Yale Global Health Justice Partnership. The Global Health Justice Partnership (GHJP) is a collaboration between Yale Law School and the Yale School of Public Health. Our team conducts research on drug pricing and advocates for increased access to medications. Since predatory pricing practices make it more difficult for patients to afford essential medications, I am testifying today in support of SB 442.

The Problem
Significant price increases in both generic and brand-name pharmaceuticals are endangering the long-term stability of our health care system, draining state budgets, and hurting patients in Connecticut and around the country. Several other groups, including the Universal Health Care Foundation of Connecticut, are submitting testimony regarding the problem of predatory pricing generally, so I will focus my testimony on how other states are addressing this problem and what Connecticut can do to control predatory pricing practices. Please also see the attachment to this testimony for more information on price increases for commonly used and essential medicines.

Initiatives in Other States
Given the challenges of passing federal legislation to address high drug prices, states are in the best position to address the problem of predatory pricing practices. At the request of the Universal Health Care Foundation of Connecticut, we are researching how other states are approaching legislation to limit predatory pricing and price gouging.

Several states are exploring options to control predatory prices. Proposals include: (1) limits on price increases above a certain level; (2) requirements that manufacturers justify price increases; and (3) prices that are tied to specific standards, either reference prices or benchmarks based upon specific criteria.

Limits on Price Increases
Last year, New York passed legislation to limit price increases for generic medicines in certain instances. Under that law, generic drugs purchased through the state’s Medicaid agency are limited to price increases of 300% or less per year. Violators must pay a rebate to the state Medicaid agency. The law has apparently been quite successful, with few drugs exceeding the established threshold. New York is now considering a proposal that would lower the threshold, limiting price increases to 75%.

Justifications for Price Increases
Other proposals require manufacturers to justify substantial price increases. Some of these proposals give the state Attorney General new power to police excessive prices. Under a bill recently taken up by the legislature in Maryland, drug companies would have to disclose information about significant price increases for essential generic drugs and generic drug-device combinations. Based on the information

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submitted, which would include the costs of developing and manufacturing the drug, the Attorney General would determine whether to prosecute the drug company for an unjustified price increase. This law would presumably help deter actions like those recent high-profile price hikes taken recently by Mylan (for the EpiPen) and Turing Pharmaceuticals (for Daraprim). In both cases, these companies dramatically increased prices for old medicines, imposing dramatic new costs for states, insurers, and individuals, such as those with high copays.

Reference Pricing and Setting Fair Prices
Other bills would set a reference price and disallow prices above those reference prices. These prices might be determined by national or international standards. A bill proposed in Oregon would require manufacturers to reimburse payers when prices exceed the highest price paid in any other country that is a member of the Organisation for the Economic Co-operation and Development (OECD). The OECD includes 35 member countries, most of which are high-income and regarded as developed economies. Since the U.S. spends more on prescription drugs per person than any other developed country, this presumably would have the effect of lowering drug prices. A ballot initiative in Ohio would ban state purchases if per-unit drug prices exceed the lowest prices received by the U.S. Department of Veterans Affairs.

Some states are taking an even broader view of pricing and are proposing to set a fair price benchmark. A New York bill proposed by Governor Cuomo would set a fair price for certain high-cost generic and brand-name drugs based on a benchmark recommended by the state’s Drug Utilization Review Board. Manufacturers that price the drug above the benchmark for any payer would be required to pay penalties.

What Connecticut Should Do
Connecticut can take meaningful steps to rein in predatory prices.

Scope of Coverage
Connecticut should consider a bill that covers generics, brand-name drugs, and drug-device combinations purchased in the state. Because prices are rising across all these categories, a comprehensive bill will be more likely to control predatory pricing.

Defining Predatory Pricing
There are many ways to define predatory prices. One method gaining traction would focus on whether the price is justified considering the costs and risks of research, development and production. By linking the cost of innovation and manufacturing to the price of the drug, this approach is both economically grounded and only targets bad actors earning an unfair return on investment.

Companies could make the case to state officials that their price is justified, but at a minimum this law would likely help constrain the extraordinary price increases we have seen in recent years. A recent bipartisan U.S. Senate Committee identifies many of these cases. These price increases appear to have no basis in either research and development costs or other increased costs for the company.

Legal Mechanisms
Because the Attorney General is the state’s chief law enforcement officer, the Attorney General’s office may be an appropriate actor to prosecute predatory pricing practices. An effective law might require disclosures from drug companies when they raise prices or release drugs at a price above a certain threshold. The Attorney General’s office could then review confidential documents from drug companies and based on that information determine whether to pursue a case that the price a company is demanding is unjustified.
according to the definition in the statute. Drug companies would also have an incentive to price drugs below the chosen threshold, likely directly bringing prices down with no overhead for the state. A small number of investigations and penalties would also have the effect of constraining the behavior of companies going forward.

Conclusion
Legislation prohibiting predatory pricing of prescription drugs is essential and could improve patient access to important drugs. It could also reduce spending by the state, and assist in balancing Connecticut’s budget. We therefore urge Connecticut to pass effective legislation to limit predatory pricing.

The Global Health Justice Partnership (GHJP) is a program hosted jointly by Yale Law School (YLS) and Yale School of Public Health (YSPH) that tackles contemporary problems at the interface of global health, human rights, and social justice. The GHJP is pioneering an innovative, interdisciplinary field of scholarship, teaching, and practice, bringing together diverse thought leaders to collaborate on research, policy projects, and academic exchanges.

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1 New York Social Services Law, art. 5, § 367-a(7)(f)(1).
Attachment 1

The Problem of High and Rapidly Growing Prescription Drug Prices

- Pharmaceutical spending in the United States is growing at an unprecedented rate.
  - Spending on prescription drugs in the United States rose by 13% in 2014 and 12% in 2015.
  - These increases are higher than any in the previous decade. In comparison, hospital and physician expenditures grew by 4.5%.
- The United States spends more on prescription drugs per person than all other developed countries.
  - Americans spend over $1,100 per person per year on prescription drugs. The next highest country is Canada, which spends $787 per capita.
  - On average, Americans pay 50 to 100% more for drugs than do people in other countries.
  - Specialty drugs are typically priced much higher in the United States than in other developed nations.
    - As an example, the average cost per month for Humira, a drug for inflammatory diseases such as rheumatoid arthritis, was $881 in Switzerland vs. $2,246 in the United States.
- Price increases, of both generic and brand-name drugs, are driving the growth in spending.
  - Retail prices for brand-name drugs increased 130 times faster than inflation in 2015.
  - Spending on specialty medicines, to treat conditions such as hepatitis, autoimmune diseases and cancer has nearly doubled in the past five years. Overall, spending on specialty medications increased by 30.9% in 2014 and 21.5% in 2015.
  - Generic medications account for 88% of prescriptions dispensed nationally.
    - Prices of some generic drugs for common conditions, such as albuterol (first launched to treat asthma in 1969) and doxycycline (an antibiotic approved by the FDA in 1967), increased by 4,000% and 8,000%, respectively, between 2013-2014.
  - Here are some other examples of outrageous price increases:
    - EpiPen: The list price for two EpiPens was $600 in 2016, up from just over $100 in 2007.
    - Insulin: the price of insulin rose 200% between 2002 and 2013 without any change in the formulation of the drug.
    - The price of Naloxone (used to treat opioid overdoses) spiked by nearly 1,000 percent in July 2016.
    - The average annual cost for multiple sclerosis (MS) medications is $78,000 today, nearly 400 percent higher than the $16,000 average in 2004.
- While prices are rising, drug corporations are reporting record profits.
  - Generic and major pharmaceutical companies combined achieved a net profit margin of 55% ranking higher than major banks (23%) and investment managers (29%).
  - The pharmaceutical industry is currently one of the world’s most profitable industries with profit margins for some companies reaching 42%.
- Major pharmaceutical corporations spend more on marketing than research.
  - Drug companies spend an estimated 3 billion on R&D but up to 24 billion on Sales and Marketing.
  - In 2015, only 11 out of 100 pharmaceutical corporations spent more on R&D than Marketing.
- The public subsidizes drug companies by paying for drugs multiple times: to fund the research, to pay insurance premiums and to purchase the drugs.
  - From 1988-2005, 49% of all drugs and 65% of priority review drugs received public research funding.
  - 84% of basic science research is supported by government and taxpayers. Drug development by major pharmaceutical companies would not be possible without these breakthroughs.
  - Pharmaceutical companies generally price medication at what the market will bear rather than how much benefit the drug has.
- The Hepatitis C drug Sovaldi retails for $84,500. Generous estimates of R&D investment into this drug by Gilead Sciences are at $870 million, with profits of more than $36 billion.4

- **Pharmaceutical prices are creating a crisis for Connecticut residents.**
  - 1 in 4 people in the United States report difficulty affording medications that they need. According to a Kaiser study, about 50% of the population reports taking prescription medications with a quarter of them reporting not filling a prescription due to cost.20
  - In 2013, Americans had to pay an estimated 41 billion in out of pocket costs for pharmaceutical drugs.21 This number has been steadily increasing due to higher deductible plans with increased copays and coinsurance.
  - Consumers live in fear of high and rising prescription drug costs. In a recent Kaiser Family Foundation poll, 63% listed as a top priority, “Government action to lower prescription drug prices”.22
  - Connecticut is experiencing a budget crisis, and increases in pharmaceutical prices impact the state budget.23
  - While overall medical costs for the health plan covering state employees and retirees rose by 2.9 percent in 2015, pharmaceutical costs rose by 20 percent.24
  - CT Medicaid pays for approximately 10 million prescriptions annually.25

11. Sanders B. Ranking Member Cummings and Chairman Sanders Investigate Suggesting Price Increases for Generic Drugs. 2014

Prepared with the assistance of Student Fellows in the Global Health Justice Partnership Practicum at Yale University.