

Written Testimony of Professor Amy Kapczynski, on behalf of the Global Health Justice Partnership (a project of Yale Law School and the Yale School of Public Health)

**IN SUPPORT WITH REVISIONS for HB 5384,
An Act Concerning Prescription Drug Costs**

March 5th, 2018

My name is Amy Kapczynski, and I am Professor of Law at Yale Law School. I teach intellectual property law, constitutional law, and co-lead a clinic on global health justice. I am also a Co-Director of the Global Health Justice Partnership (GHJP), a joint project of Yale Law School and the Yale School of Public Health. [GHJP](#) tackles contemporary problems at the interface of global health, human rights, and social justice. One area of our expertise relates to access to medicines, and more specifically, to drug pricing. Last year, with the help of a student team and several partner organizations, we produced a [report](#) providing information and recommendations to state legislators and officials regarding what they can and should do to curb drug prices and to make pricing more transparent. For that report, we consulted dozens of recent state legislative proposals intended to impact drug prices, and conducted extensive legal and policy research. In my capacity as an academic, I have also authored many articles on drug pricing, including several recent pieces in journals such as the New England Journal of Medicine and Health Affairs.

We at GHJP fully support efforts in Connecticut to illuminate the drivers of rising drug prices, and more directly to curb the rising cost of drugs. As I described in a recent [article](#), rising drug prices are a substantial problem for patients, insurers, and our healthcare system. We have designed a system that creates many barriers to market competition (some come from patents, others from regulatory barriers and inelasticity of demand given pervasive third-party payers in healthcare). Companies are increasingly exploiting their market power to raise prices far beyond what can be justified with respect to the costs of research and development – as is particularly evident when companies increase the costs of old (and even off-patent) medicines. We address the broader policy concerns raised by price controls in our report, and describe why there is room for significant action to protect consumers that will not negatively impact R&D or other legitimate industry priorities.

As the Committee will likely hear, high drug prices are a significant problem not just around the country, but also in Connecticut. We recently hosted an event at Yale Law School on the impact and causes of the rising price of insulin. The event brought together patients, providers, and legal experts (a video is available [here](#)). We heard astonishing accounts of what people with diabetes in Connecticut must do to afford life-saving insulin: forego food and rent, exhaust their savings, and even steal from other diabetics because they have been forced into a life-or-death dilemma by rising drug costs. Insulin prices have risen by around 300% in just a decade, for the same old drugs. Many patients – even those that have insurance -- must pay \$1000 or more a month out of pocket for medicines that they need to live. And this is just one group of patients, and one drug. With no serious efforts at reform on the horizon at the federal level, the time for action in Connecticut is now.

We therefore support two aspects of HB 5384: Its efforts to shed light on the role of PBMs in high drug prices, and its requirement that some drug companies must provide detailed justifications of their price increases.

However, Connecticut can and should do significantly more to shed light on the drivers of high drug prices. In our report, we describe the importance of transparency requirements that apply broadly to all pharmaceutical companies, and note that transparency laws should address not just PBMs, or a few select drugs, but require “as much information as possible about drug prices and development, manufacturing, and marketing costs on a drug-by-drug basis” (p. 14). Today, consumers have very little information about the drivers of high drug prices, and regulators are ill-prepared when new drug price increases are announced. **At a minimum, Connecticut should adopt transparency provisions like those recently passed in California** (see p. 15), which requires companies to give 60 days-notice of price increases for all drugs, generic and patented, that have a wholesale acquisition price over \$40 where price increases exceed 16% over two calendar years. This would provide more comprehensive information to regulators as well as permit them to prepare for price increases. By harmonizing with other states requirements Connecticut could minimize the costs of complying with price reporting requirements. Connecticut should also go further, however, and require reporting about influences on drug prices (including private R&D, the contributions of the public sector, and marketing and patient assistance programs), as a draft Maryland Bill last year did (p. 16).

In addition, the trigger for scrutiny of high prices in Sections 3 and 4 of the Connecticut law should be much lower, and the number of drugs for which reporting is required should not be capped. If companies wish to increase prices more than 10% in a given year, they should have to justify this clearly. Consumers are entitled to know why drug prices are rising, and political accountability created by reporting requirements can help provide a soft cap on companies that to date have felt free to increase prices year, after year, after year.

Finally, Connecticut also should create new powers to hold companies that excessively price their drugs accountable. The current law gives the state no explicit authority to take action against excessive pricing. Other states have gone further, and Connecticut should as well. Maryland, in H.R. 631, created a simple remedy for excessive pricing that is particularly promising for a small state like Connecticut: Its Attorney General is empowered to define excessive price increases, and to take action against companies that lack adequate justifications for significant increases in drug prices. **If Connecticut does not create a similar penalty and right of action against companies that excessively price, this law will do little to protect Connecticut residents that are in desperate need of relief.**