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Testimony in Support of House Bill 5384

An Act Concerning Prescription Drug Costs

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Chairs and members of the Insurance and Real Estate Committee, thank you for the opportunity to speak on House Bill 5384: An Act Concerning Prescription Drug Costs. Universal Health Care Foundation of Connecticut envisions a state where everyone has access to quality, affordable health care. We support the spirit of this bill, to address skyrocketing prescription drug prices, but we have recommendations for how the bill can be significantly improved.

I applaud the Committee for raising this bill. I serve on the Healthcare Cabinet and chaired the Cost Determination and Cost Containment Work Group. The group heard from many different stakeholders and studied the many different steps involved in determining prescription drug prices. Very powerful interests are involved, including pharmaceutical manufacturers, pharmacy benefit managers and insurance companies. At the end of the very complex and convoluted supply chain that sets prescription drug prices is the patient, paying for her prescription at the pharmacy counter or through mail order.

As our work group delved into this complexity, one thing became quite clear: the interests of consumers are not well-served by the current system. For people with diabetes, cancer or other chronic illnesses this is becoming a life or death issue. What good is the “innovation” our system encourages, if people can’t afford their medications?

The problem of high prescription drug prices starts with the pharmaceutical manufacturers. When a new branded drug is introduced, the manufacturer is handed a monopoly. But there is nothing stopping them from charging as high a price as they believe the market will bear. This has led to higher and higher launch prices, particularly of specialty drugs. Then, it is quite common for manufactures to raise their prices twice a year. Even if a launch price doesn’t start out of reach, over time the increases add up and the drug is no longer affordable. This problem is not limited to brand name drugs-certain generic drugs have also seen large increases.

On the other side of the negotiating table is a fragmented structure of insurance companies and pharmacy benefit managers (PBMs), negotiating rebates and other discounts, that are kept hidden from view. The PBM middlemen, are now part of a highly consolidated industry, and appear to

driving up their own profits by pocketing fees, rather than passing along enough of the savings to the insurers they contract with. And with negotiated rebates and fees treated as proprietary information, when a patient wants to know the price of her medication, this is an impossible question to answer.

Finally, the insurers, unable to keep prices down sufficiently through the negotiating process, are increasingly relying on benefit designs that shift risk onto patients, with patients shouldering more and more of the cost burden through higher deductibles and co-insurance. Insurance is supposed to protect people's financial security, should they have the misfortune to become ill. Instead, people are cutting pills in half or forgoing filling their prescriptions all together.

While everyone agrees that prescription drug prices are too high, these three industries, pharmaceutical manufacturers, PBMs and insurance carriers, point the finger at each other, while fighting to protect their own financial interests. Meanwhile, the system is failing the people of our state.

Increasing prescription drug prices are a major driver of health care costs. A major focus of the work of Universal Health Care Foundation has been to address unaffordable health care costs. High costs impede access to care. They also add to the cost of living in Connecticut, which we know is of major concern as the state strives to hold on to its revenue base and to retain good paying jobs.

The Foundation has studied how other states have responded to high prescription drug prices. We have concluded that Connecticut should pursue policies that:

- Lower out-of-pocket costs for patients
- Improve price transparency at all levels of the supply chain
- Empower state government to take action against price gouging

The rest of our testimony focuses on how well HB 5384 will have an impact on these three policy areas, and includes suggestions for improving the bill.

Lower out-of-pocket costs

Right now patients are not benefiting sufficiently from any discounts that are negotiated by their insurer, or by PBMs on behalf of insurers. This is particularly true when they are in their deductible period, when they are charged the full list price of the drug, and when they must pay a percentage of the price (co-insurance), and that percentage is based on the list price, not the negotiated price.

HB 5384 (Section 6) makes a good start at helping patients with high out of pocket costs. It directs the insurer to pass along "the majority" of the rebate directly to the patient, to lower their out of pocket costs, and to use the remainder of the rebate to lower premiums. We would prefer to see the full rebate passed along to the patient when they are paying out-of-pocket. In other

parts of the health care system, patients pay out-of-pocket based on the negotiated price. Why wouldn't we do the same thing with prescription drugs?

PBM transparency

HB 5384 (Section 1) includes strong PBM transparency provisions. Gathering more information on the size and scale of rebates and fees, and making that information public should be helpful for future regulation of this very opaque part of the supply chain.

Pharmaceutical manufacturer transparency

HB 5384 addresses prescription drug price transparency in the commercial insurance market (Section 3) and for the cost of prescription drugs to the state itself (Section 4). In both of these cases it sets a reporting threshold that is entirely too high: whether the price has increased over 25% in the previous year. Instead, we should be emulating the legislation recently passed in California (SB 17) or Oregon (HB 4005):

- California's law sets a reporting threshold of price increases of 16% over a 2 year period
- Oregon's House and Senate just passed a law that has a threshold of 10% a year for any drug that has a price of more than \$100 for a month's supply

In addition to setting a reporting limit that is too high, HB 5384 Section 3 layers an extra requirement that the price increase must be responsible for at least a one dollar increase in per-member-per-month(pmpm) insurance rates.

With thresholds like these, HB 5384 may lead to reporting of a few outrageous price increases, along the lines of what happened with EpiPen a few years ago, but it will do nothing to protect people from the steady, yearly or twice-a-year price increases that are a regular practice of the industry that have led to the situation we face now. Even the thresholds in the California and Oregon bills may be too high to address this pattern of price increases, but they are certainly better than the thresholds in the bill as currently written.

Furthermore, if a manufacturer did have to report justifications of their price increases when they exceed the threshold, the language in Sections 3 and 4, does not amount to more than asking drug corporations to share information that is already public. This is what the text reads in section 3, lines 173-183:

- (1) aggregate, company-level research and development costs and such other capital expenditures that the commissioner, in the commissioner's discretion, deems relevant for the most recent year for which final audited data are available, and
- (2) a written, narrative description, suitable for public release, of all factors that contributed to the increase in the cost of the prescription drug.

Contrast that with Oregon's law, which asks for much more specific information about factors that contributed to the price increase, requiring manufactures to report costs associated with

marketing and distributing the drug, whether any research and development costs associated with the drug were paid for by public funds, the total sales revenue attributed to that drug and the profit attributable to it.

Empower state government to take action against price gouging

Equally disappointing to the weak transparency provisions of HB 5384, is the fact that it does not empower the Attorney General to take action, when the transparency provisions identify unconscionable price increases.

The top recommendation of the Healthcare Cabinet was to establish a Drug Review Board to review price increases and make recommendations to the Attorney General to pursue remedies. We believe strongly that HB 5384 should have an action component, beyond requiring transparency reporting.

Universal Health Care Foundation of Connecticut's mission is to serve as a catalyst that engages residents and communities in shaping a democratic health system that provides universal access to quality, affordable health care and promotes health in Connecticut. We believe that health care is a fundamental right and that our work is part of a broader movement for social and economic justice.