S.4007 / A.3007 (HMH Part Y Subpart B)

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S.4007 / A.3007 (HMH Part Y Subpart B)

SUBJECT

Prescription Drug Price and Supply Chain Transparency Act of 2023

DATE

February 23, 2023

OPPOSE

The Business Council opposes S.4007 / A.3007, Part Y, Subpart B. This Executive Budget proposal:

- mandates that filing fees or penalties associated with any notice of wholesale drug price increases be deposited into the Pharmacy Benefit Manager (PBM) regulatory fund; and
- requires manufacturers to provide notice of certain patent settlement agreements.

The Pharmacy Benefit Manager regulatory fund was created to fund the PBM program at DFS and is currently funded by fees from PBM licensing and penalties. The Business Council strongly opposes the use of any fines or penalties for specific revenue purposes, and this legislation only seeks another revenue source to supplement the existing PBM fund.

The expressed intent of the legislation is to address prescription drug costs and affordability. The Business Council is deeply committed to ensuring lower healthcare costs for businesses and employees across New York State, and frequently comments on pending legislation that will increase healthcare costs. Yet, this legislation does nothing to lower the cost of prescription drugs and only seeks to levy fees and fines to provide revenue to the PBM fund.

As we have stated under past proposals, the use of fines and penalties for specific budgetary purposes is a significant problem across the country. Balancing state and local budgets on criminal defendants, civil penalties and fees is unsustainable and only incentivizes increased fees and enforcement—which is only further exemplified by this proposal.

This Executive Budget proposal is in many ways duplicative of laws passed in 2020 giving DFS and the Drug Accountability Board the ability to investigate significant spikes in prescription drug prices. The Business Council is also

concerned that the reporting structure could reduce New Yorkers' access to needed drug therapies, as the proposal requires that no drug can be sold in the state until its pricing report and accompanying fee are received by DFS.

Further, the proposal seeks to insert state agency oversight into patent settlements, which are governed by federal law, by mandating pharmaceutical manufacturers to file notice with DFS whenever they enter into an agreement that could delay or prevent another manufacturer from introducing a generic substitute. The Federal Trade Commission already has vast oversight and authority to address potential anticompetitive settlements, making the DFS regulatory powers proposed in this section superfluous. These provisions blatantly ignore federal law and create a "New York only" standard which will cause confusion and create unintended consequences, like potentially delaying access to generic drugs for New Yorkers.

Patent settlements were created to resolve patent disputes. They most often lead to the introduction of generic drugs and biosimilar products into the market earlier than they would have had they been forced to wait until the end of a patent term. Because of this, consumers benefit from earlier introduction of generic drugs and lower prices that accompany them. Modifying these standards in New York means that settlements will be less desirable and patent disputes will take longer to wind through the court system – causing delay to a market of generic drugs and ultimately making drugs more expensive for longer periods of time for New Yorkers.

For these reasons, The Business Council opposes Part Y, Subpart B of S.4007 / A.3007 and recommends against its inclusion in the final state budget.