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February 27, 2023

The Honorable Helene Weinstein and Liz Krueger
Chair, Assembly Ways & Means
Chair, Senate Finance

Re: Testimony in Opposition to *Health Article VII, Part Y Subpart B*, Prescription Drug Price and Supply Chain Transparency Act of 2023

Submitted By: The Biotechnology Innovation Organization (BIO), Washington, DC

Assembly Ways & Means Chair Weinstein, Senate Finance Chair Krueger, and members of the Joint Health Budget Committee. I thank you for this opportunity to submit testimony for your consideration as you begin to review proposals with respect to the Governor's proposed 2022 – 2023 New York State Budget. The Biotechnology Innovation Organization (BIO) would like to express our opposition to *Health Article VII, Part Y Subpart B*, Prescription Drug Price and Supply Chain Transparency Act of 2023. This expansive proposal would preclude manufacturers of drugs from selling their therapies in New York unless they provided advance notice of price increases made for any reason. The proposal creates an unnecessary and cumbersome bureaucracy with little protection for trade secrets and other confidential information.

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. Our members are committed to advancing science and improving the health and well-being of our planet using biotechnology.

We appreciate the Governor's interest in ensuring the state and patients have relevant information about the costs of prescription medicines to help them make more informed decisions about their treatment. We believe that certain meaningful information that can be understood by consumers could help inform discussions about price and access in the US healthcare system. BIO is a long-time supporter of providing patients more clarity about how medicines and other healthcare services are priced, and how those prices might impact their anticipated out of pocket expenses. Unfortunately, we believe this approach – reporting of drug price increases, even by as little as one dollar – does not achieve this goal and will create other negative impacts. Manufacturers already disclose information regarding sales and prices, and requiring reporting and then publishing of proprietary data will not provide patients with useful information for making informed decisions about treatment options.

Any prescription drug transparency provisions should focus on what matters most for patients.

The transparency provisions included in this proposal fail to provide meaningful information to patients. More focus should be placed in areas that directly help consumers. This includes ensuring patients know what their cost-sharing obligations are, how health plans are using manufacturer rebates, and what prescription drugs are available on any given formulary. This type of information can assist beneficiaries in determining which health plan most appropriately meets their medical and financial needs.



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New York already has the authority to investigate unreasonable price increases for pharmaceuticals.

In 2020, New York enacted legislation that gave DFS significant authority to investigate and sanction drug price increases. Moreover, the Attorney General has and exercises investigatory authority over price gouging and other anti-consumer practices.

Small and emerging biotechnology companies, which make up a large portion of New York’s life science industry, will be overly burdened by the reporting requirements included in the proposal.

Small, emerging companies must use their limited resources as efficiently as possible to continue to supply the therapies patients need and to invest in future innovation. Any proposed reporting requirements that force researchers and scientists to incorporate burdensome accounting measures into their laboratory practices risk diverting the scarce resources of these companies.

Reporting requirements included in the proposal will interfere with the market-based ecosystem in the U.S.

Any provisions requiring prescription drug manufacturers to provide a justification for the increase in the wholesale acquisition cost of a drug will interfere with the market-based ecosystem, which actually works to reduce prescription drug costs through robust private-sector negotiations. It is also important to note that under this proposal, much of the information manufacturers are required to disclose is competitively sensitive. Disclosing that information will put the manufacturer in a situation of telegraphing sensitive pricing metrics to competitors, which undermines the market-based system for prescription medicines. Additionally, any disclosure requirements by the state will lack adequate context for the complex issue of pricing, which is not based merely on a manufacturer’s cost to produce a product. Pricing is also based on market forces including supply chain dynamics, an accounting of failed research programs, and an assessment of value.

The proposal will reduce competitiveness in the marketplace by failing to protect the confidentiality of proprietary information manufacturers are required to report.

The proposal states that “any communications or documents” will be “confidential,” “except where and as the superintendent determines that disclosure is in the public interest.” This is particularly concerning because the proposal lacks key specifics on what information will be deemed “in the public interest”. This will lead to a decline in competitiveness and in higher drug costs for all payers. Much of the information manufacturers are required to provide under the proposal is investment-backed data and competitive in nature, which is subject to trade secret protections. BIO therefore strongly urges your committee’s to not to move forward with any budget proposals that allow for public disclosure of confidential and proprietary data.

For these reasons, BIO opposes *Health Article VII, Part Y Subpart B, Prescription Drug Price and Supply Chain Transparency Act of 2023*.

Sincerely,

/s/

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Director, State Government Affairs – Eastern Region

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