TESTIMONY OF JENNIFER HAWKS BLAND, CEO OF NEWYORKBIO
JOINT ASSEMBLY AND SENATE HEALTH BUDGET HEARING

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Assembly Ways & Means Chair Weinstein, Senate Finance Chair Krueger, and members of the Joint Health Budget Committee, thank you for this opportunity to submit testimony for your consideration as you review proposals in the Governor's proposed 2022 – 2023 New York State Budget. I would like to express our concerns regarding Part Y, Sub-part B of the Health and Mental Hygiene proposed executive budget (S.4007/A.3007) – also known as the "Prescription Drug Price and Supply Chain Transparency Act."

I submit this testimony on behalf of NewYorkBIO, the state's leading life sciences trade organization. NewYorkBIO brings together over 250 of New York's bioscience companies, universities, research institutions, patient-focused organizations and others dedicated to advancing life science research and commercialization. The state of New York and the New York City metropolitan area is home to the largest and richest bioscience community in the world: among other assets, the region boasts over 60% of large pharmaceutical national or global headquarters; supports more than 75,000 direct biotechnology jobs; graduates more life science PhDs than any other region in the US; is home to over 25% of the cancer clinical trials in the US; and lays claim to the world's largest concentration of academic medical centers.

NewYorkBIO strongly opposes this proposal because it attempts to address the complex issue of drug pricing by creating a new unwieldy and inefficient reporting structure that could have the effect of reducing New Yorkers' access to important therapies. In addition, it creates duplicative regulation of settlement agreements in patent dispute litigation when these agreements are already regulated at the federal level.

Advanced Reporting of Any Increase in Cost

This proposal would not allow any drug to be sold in New York unless manufacturers file detailed reports related to any price increase for any reason. Currently there are over 110,000 individual medicines approved in the U.S. which would be captured by this legislation. In addition to the detailed reports, which require a justification for the price increase, the provision also imposes reporting fees based upon the timing and the amount of the price increase, with increased filing fees for notice less than 120 days in advance of a price increase as well as a "fee" of $100,000 for a manufacturer that fails to file with the state in advance of the price increase.

To further this aim, it also gives the Department of Financial Services (DFS) incredibly broad and vague investigatory powers related to price increases. Further, a manufacturer has as few as

fifteen days to respond and faces significant civil penalties. Of specific concern is that DFS would also have almost unlimited discretion to release trade secrets or other confidential information provided by manufacturers.

New York already has authority to investigate unreasonable price increases for pharmaceuticals. The Attorney General has and exercises investigatory authority over price gouging and other anti-consumer practices. In addition, over 7.7 million New Yorkers receive healthcare through Medicaid. Over the years, lawmakers have given Medicaid significant authority to address increases in drug prices through the Drug Cap, the High-Cost Drug initiative, and other tools.

Just recently in 2020, New York directly addressed concerns about price transparency and enacted legislation that gave DFS significant authority to investigate and sanction "Drug Price Spikes." This law creates a 9-member Drug Accountability Board comprised of experts to assist DFS with such investigations. This existing, more narrowly tailored process seems more likely to identify and address inappropriate pricing activity in the marketplace than requiring disclosure and filings from every single company that ever needed to raise the price of a medicine for any reason.

NewYorkBIO is particularly concerned about the potential to be disproportionately punitive for our smallest innovative companies. Appropriately pricing a new therapy can be challenging and may require adjustments early in the life cycle of a drug. A large manufacturer with many approved therapies would also face significant challenges to operate in a marketplace with this policy in place.

Patent Settlement Reporting

This part of the proposal would interject the state into patent settlement agreements between drug manufacturers. Supporters of these policies argue that the purpose of litigation settlements in patent disputes is to delay the introduction of generic therapies into the marketplace, however the Federal Trade Commission already has jurisdiction to ensure that agreements involving intellectual property related to drugs do not have this effect. Moreover, creating additional standards of disclosure and review at the state level could delay the introduction of competing generic therapies because a new reporting regime could disincentivize companies from reaching settlements.

Conclusion

The State of New York has long supported the bioscience industry. In fact, the proposed budget includes several other provisions specifically designed to help the grow life sciences in NY, from a proposal to reauthorize the New York City Biotech tax credit (Revenue Part H) to the Governor's call to create two Cell and Gene Therapy hubs in New York. Unfortunately, the "Prescription Drug Price and Supply Chain Transparency Act" undermines the life sciences industry in the state. Moreover, it represents an alarming departure from the state's usual stance of pursuing policies that expand access to therapies that benefit New Yorkers.

It is for these reasons that New York BIO strongly opposes this proposed budget provision. If you have further questions regarding this issue, please contact our Chief Executive Officer, Jennifer Hawks Bland, at Jennifer.Bland@newyorkbio.org.