PRESCRIPTION DRUG AFFORDABILITY BOARD (PDAB)

SENATE BILLS 483-485

MYTH

A prescription drug affordability board (PDAB) will deny people access to prescription drugs.

FACT

A PDAB will exist to improve access to expensive drugs by making them more affordable for uninsured individuals and those covered by public and private health plans. The purpose of a PDAB is to target drugs that the PDAB board has determined to create financial challenges and patient access problems due to cost.

MYTH

A PDAB will create drug shortages because drug companies will choose not to sell their products in states that have imposed an upper price limit (UPL).

FACT

It is unlikely that a manufacturer would boycott a state over a UPL that increases sales. Such an act would directly punish patients, creating serious reputational issues for manufacturers. Furthermore, a boycott would also cede market share to therapeutically similar products.

MYTH

Pharmacies will be forced to eat the costs of drugs if a PDAB imposes a UPL.

FACT

A UPL will apply to all payments and purchases for a drug with a UPL. This means that the wholesaler must procure the drug at a cost that is compliant with the UPL in that state, which will allow in-state customers to comply with the UPL. The UPL relies on the exact same procurement and financing chain in place today, and the UPL simply establishes a statewide, uniform, UPL on costs so that everyone has affordable access to drugs. Pharmacies can pay no more than the UPL, and pharmacies can bill no more than the UPL. The legislation also requires a 6-month lead time until a UPL takes effect, giving wholesalers and pharmacies ample time to sell off current supply at current cost.

MYTH

A PDAB violates the dormant commerce clause.

FACT

PDAB legislation was designed to withstand legal challenges that a state is unlawfully regulating interstate commerce by only regulating payments and reimbursement rates for state-licensed entities. In the recent U.S. Supreme Court decision in Rutledge v. PCMA, the Court found that rate regulation is a well-established role of state government and in-state regulation cannot be construed to violate the Employee Retirement Income Security Act of 1974 (ERISA) preemption because rate regulation does not affect an ERISA plan's core business of providing benefits and coverage, even if the rate regulation were to raise the costs of operation. The Rutledge v. PCMA decision addresses many of the same claims in which the pharmaceutical industry would sue using the dormant commerce clause and regulation of interstate business operations.