Prescription Drug Pricing

In 2017, Nevada lawmakers passed Senate Bill 539, which made Nevada the first state in the nation to require manufacturers of pharmaceutical products to file reports with the state detailing their manufacturing and marketing costs along with any rebates and promotions they offer. The bill was narrowly targeted to essential treatments for diabetes and was intended to make manufacturers rationalize the prices of these goods with their costs. It also established similar new reporting requirements for sales representatives and pharmacies.[1]

An original version of the legislation would have imposed direct price controls on these medications that made it illegal for prices to rise faster than inflation, regardless of companies' cost structure. That version was vetoed by then-Gov. Brian Sandoval.[2]

Lawmakers subsequently expanded these reporting requirements to asthma medications in 2019[3] and then to all medications costing more than $40 for a full course of treatment in 2021.[4]

As a result, the Nevada Department of Health and Human Services now maintains a list of thousands of pharmaceutical products that are subject to these reporting requirements.[5]

Key Points

The major reason for high pharmaceutical prices is FDA regulation. Concern about high pharmaceutical prices is understandable. In the United States, the estimated capitalized cost of bringing any new drug to market approaches $1.8 billion. That's largely because of 1962 amendments to the federal Food, Drug and Cosmetic Act that requires drug makers to prove the effectiveness of their products and not just product safety. Previously, effectiveness was a judgment for the medical community while the FDA just prevented the marketing of unsafe products. After passage of these amendments, the cost of bringing a new drug to market increased by an order of magnitude and pharmaceutical development slowed.

The amendments also led to increased market concentration among a handful of firms, as few firms could afford the capital expense necessary for drug development. Nearly half of drug makers dropped out of the market within six years. Today, this lack of competition within the pharmaceutical industry continues to undergird rising consumer prices of pharmaceuticals.[6]

Nevada's requirements further reduce competition and increase market power of remaining suppliers. Extensive reporting requirements give a competitive advantage to well-capitalized firms with large bureaucratic capacity. In 2019, Nevada fined 21 small drug manufacturers a total of $17.4 million for failure to timely file Nevada's unique reports. Several of these companies indicated they weren't even aware of the new reporting requirements.[7] Small manufacturers may respond by abandoning the relatively small Nevada market.

Nevada's requirements likely violate federal law. After passage of the original 2017 prescription drug law, a trade group of drugmakers sued, claiming the required disclosures included trade secrets and would require drugmakers to forfeit their intellectual property rights. The group voluntarily dismissed its claim only when the department agreed in its implementation to prevent public disclosure of sensitive information. The group noted it "continue[s] to believe that [the law] is facially unconstitutional," and may recommence litigation if any proprietary information is made public.[8]

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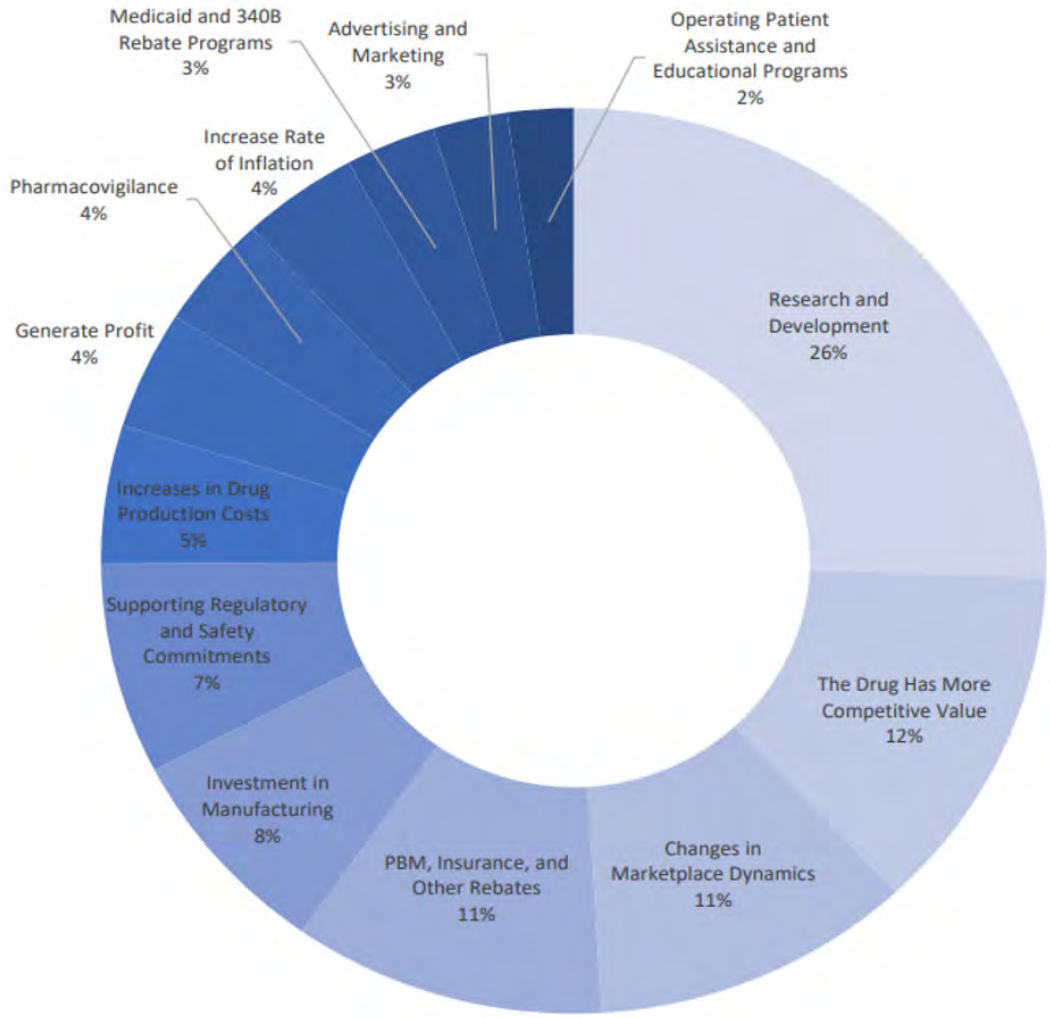
[1] Nevada Legislature, 79th Session, Senate Bill 539.
[2] Geoffrey Lawrence, "Nevada's Pharmaceutical Disclosure Law Could Cause Drug Prices to Escalate Even More," The Nevada Independent, December 2, 2019.
[3] Nevada Legislature, 80th Session, Senate Bill 262.
[4] Nevada Legislature, 81st Session, Senate Bill 380.
[5] Nevada Dept. of Health & Human Services, "Nevada Drug Transparency 2024 Drug Lists," January 31, 2024.
[6] Geoffrey Lawrence, "Focus at the FDA," Reason Foundation policy brief, August 2022.
[7] Lawrence, note 2.
[8] Ibid.

Recommendations

Eliminate Nevada's drug price-reporting laws. Nevada's reporting requirements expose the state to civil liability for an unconstitutional taking of private property. Moreover, they raise barriers to entry and restrict competition among drugmakers, ultimately contributing toward even higher prescription costs.

Allow the medical community to assess the effectiveness of drugs in intrastate trade once safety has been established. If lawmakers want to reduce drug costs, they should address the underlying cause of high costs and allow drugs to enter intrastate trade after they have been demonstrated safe, but without relying on the FDA's determination of effectiveness.

Manufacturer Justifications for Price Increases of Essential Diabetes Drugs



Source: Nevada Department of Health and Human Services, "Drug Transparency Report: 2019 Essential Diabetes Drugs."