



April 7, 2022

The Honorable JB Pritzker
Governor State of Illinois
207 State House
Springfield, IL, 62706
RE: Veto Request for HB 1780

Dear Governor Pritzker:

On behalf of the Association for Accessible Medicines (AAM) and its members, I write today to request your veto of HB 1780, the “Drug Take-Back Act,” which requires manufacturers of drugs that are “sold or offered for sale in Illinois” to establish a take-back program for unused, unwanted, and expired medications, principally by paying law enforcement or DEA-authorized entities to do the collecting and disposing. The bill further obligates covered manufacturers to “pay all administrative and operational costs associated with establishing and implementing the drug take-back program in which it participates,” and bars them from “increas[ing] the cost of covered drugs to recoup the costs of a drug take-back program.”

AAM is the nation’s leading trade association representing the developers and manufacturers of generic and biosimilar medicines. AAM’s core mission is to improve the lives of patients by advancing timely access to affordable, FDA-approved generic and biosimilar medicines. Patients in Illinois benefit from a highly competitive generic market that lowers the cost of prescription drugs.

AAM requests a veto of HB 1780 because it fails to require that brand-name drug companies pay their fair share of the take back expenses established by the bill.

AAM recognizes the need to dispose of unused, unwanted, and expired medications safely and in an environmentally appropriate way. AAM supports efforts to promote sustainable and safety-enhancing drug take-back programs. Indeed, AAM and its members have supported, and continue to support, innovative and wide-reaching programs like MyOldMeds.com and the DEA’s National Prescription Drug Take Back Day. As drafted, however, HB 1780 threatens patients’ access to safe, affordable and effective generic drugs by failing to require that brand-name drug companies pay their fair share of the take back expenses created by HB 1780. Accordingly, manufacturers of affordable generic medicines are likely to bear an unreasonable share of the costs of operating the program. This program will likely have the effect of raising the costs of generic medicines for all citizens of Illinois.

Affordable generic medicines are the backbone of the Illinois health care system. HB 1780 puts those benefits at risk. In 2020, generic medicines saved Illinoisians \$12.7 billion by providing a safe, effective, and more affordable alternative to expensive brand-name medicines. Those savings are felt both at the systemic level and by individual patients at the pharmacy counter. Generic medicines account for 90% of prescriptions filled by Americans but only 18% of prescription drug spending, and are available at an average co-pay of \$6.61, compared to \$55.82 for brand-name medicines.

HB 1780 is redundant: Illinois already has a robust statewide drug collection infrastructure that works. Today, there are already 549 drug disposal kiosks throughout the state of Illinois that provide easy and accessible disposal for unused medicines. Ninety-six percent of Illinois residents live within a 20-minute drive of a kiosk (89% live within a 10-minute drive). MyOldMedis.com, an easy-to-use tool created by the Pharmaceutical Products Stewardship Work Group provides consumers with a tool to locate kiosks and other disposal options.

HB 1780 targets small manufacturers instead of Fortune 10 companies. Four of the ten largest companies on the Fortune 500 list directly profit from prescription drug sales, but not one of them would contribute a penny to the programs contemplated in HB 1780. Manufacturers are not the only entity in the supply chain that profit from the sale of prescription drugs, and to lay the cost of disposal squarely at their feet is inexplicable. HB 1780 would result in generic manufacturers paying the associated costs of a program incurred by any retail pharmacy giant—significantly larger corporations than all generic manufacturers—that desire to enter a program. The bill also fails to include large wholesalers who are responsible for the actual sale of drugs into the State of Illinois.

HB 1780 is unconstitutional and preempted by federal law. By prohibiting manufacturers from increasing the cost of drugs to pay for the new program created by HB 1780, Illinois would violate the dormant Commerce Clause of the U.S. Constitution. The Commerce Clause is violated when a state law “regulate[s] the price of any out-of-state transaction, either by its express terms or by its inevitable effect.” *PhRMA v. Walsh*, 538 U.S. 644, 669 (2003). In this case, generic drug manufacturers, almost all of whom are located outside of Illinois, make the vast majority of sales to wholesalers and pharmacies located outside of Illinois. Moreover, Illinois has no authority to permit competitors to violate the Sherman Act and federal antitrust law by collaborating to create the program. HB 1780 also violates the First Amendment by forcing manufacturers to promote the take-back program it establishes, and simultaneously prohibiting manufacturers from promoting any competing program. For these reasons and more, HB 1780 is unconstitutional and highly vulnerable to a legal challenge whose defense would be borne by the taxpayers of Illinois.

If this proposal is signed into law, the savings that Illinois patients currently receive from generic medicines will be in jeopardy, and the taxpayers of Illinois will be required to defend an unconstitutional law. AAM and its member companies are willing to participate in stewardship programs that are sustainable, broad based and address real problems. The most important component in reducing the amount of unused medications and the one most likely to achieve measurable, long-term results is educating consumers and providers about medication prescribing and adherence. Proper prescribing and adherence will reduce the number of unused pills, reduce the overall costs of health care, and mitigate the need for complex and costly takeback programs. We, thus, respectfully request your veto of HB1780. If you have any questions, please do not hesitate to contact me or Ashlie Van Meter, Senior Director, State Affairs.

Sincerely,



Dan Leonard
President and CEO
Association for Accessible Medicines