

**PHARMACISTS SOCIETY OF THE STATE OF NEW YORK
COMMUNITY PHARMACY ASSOCIATION OF NEW YORK STATE
NEW YORK STATE COUNCIL OF HEALTH-SYSTEM PHARMACISTS**

MEMORANDUM IN OPPOSITION

SFY 2020 Executive Budget Part XX (S.1509-A/A.2009-A)

Opioid Excise Tax on Pharmacies/Vulnerable Patients

The above-listed organizations are strongly opposed to the SFY 2019-20 Executive Budget proposal (30-day amendment) to impose an excise tax on the first sale of an opioid (defined in proposal) in the state at the following rates:

- A quarter of a cent per morphine milligram equivalent (MME) where the wholesale acquisition cost (WAC) is less than 50 cents; or
- One and one-half cents per MME where the WAC is 50 cents or more.

The proposal states that “sale” does not include the dispensing of an opioid pursuant to a prescription to an ultimate consumer. Also, it states that the tax is to be charged against and paid by a registrant (defined in the proposal to include a wholesaler/distributor, manufacturer or outsourcing facility) making the first sale, and shall accrue at the time of such sale. However, the proposal says that “**the tax may be passed down to the purchaser**” and would generate \$100 million annually for the general fund.

Proposal is actually a \$100 Million Tax on Vulnerable Patients and Pharmacy Providers

As expressly stated in the proposal and summarized above, this tax, while imposed on manufacturers and wholesalers CAN and WILL be passed down to pharmacies, other providers like hospice and hospitals and the vulnerable patients in need of pain relief for serious and legitimate reasons. Unfortunately, this is nothing more than a tax (imposed on prescription drugs for the first time) to generate \$100 million to address a budget deficit. **We are strongly opposed to the proposal due to how it will actually be applied and its unintended consequences.**

The alleged goal of this proposal is to require manufacturers and distributors of opioids to bear some responsibility for the state’s opioid epidemic and provide funding to help address it. While pharmacies fully support and have been strong partners in the effort to prevent opioid addiction and the devastation it can cause to individuals, families and communities, pharmacies and patients cannot absorb this \$100 million tax. *It is patently unfair for patients and pharmacies to be placed in this position.*

Manufacturers develop, price and promote their medications. Wholesalers distribute medications to pharmacies, hospitals, long term care and other facilities/providers etc. When a patient comes to pick up a prescription(s) at a pharmacy, the pharmacist pulls up their insurance information and charges any required copay/ coinsurance and then submits the claim to the public or commercial health insurance plan or pharmacy benefit manager (PBM). The payer then remits payment to the pharmacy. The pharmacy does not make or prescribe the opioid and is not a price setter by any means. Pharmacies pay the price for the drug charged to them by the wholesaler/ manufacturer so they can stock the drug and then hope that what they will be reimbursed for the drug by the payer is enough to cover their costs. More and more pharmacies are getting reimbursed just at or below their costs. This model is already unsustainable and pharmacies cannot absorb an additional \$100 million tax that will be incorporated into the price pharmacies pay to stock these essential medications, if this proposal is enacted. Pharmacies have no way to recoup “upstream” from wholesalers/manufacturers or “downstream” through health

plans/PBMs. Further patients who truly need medications, especially those with high deductible plans or who are underinsured, should not and cannot afford to pay this tax. Finally, hospitals are reimbursed by payers mostly based on a diagnosis related group (DRG) and so would be unable to easily “pass along” the added cost.

Strong Patient Access Concerns

Importantly, this tax could impact legitimate patient access (individuals with cancer or other acute pain, patients in hospice, or those with serious injuries like veterans or recent, major surgeries) to these drugs if pharmacies are forced to absorb the impact of the tax each time a drug in this class is dispensed and/or if a patient cannot afford their medication due to a price hike from the tax. Further with pharmacies often being paid at “below cost” reimbursement, this tax would only add insult to injury and could force some pharmacies to make service reductions, discontinue stocking this medication or other tough decisions. While a per cent per MME proposal may not sound like much, the tax is significant and can increase the cost of dispensing medications. **If patients cannot afford or otherwise access needed prescription pain medications, this will only increase the use of illegal drugs which may be less expensive, making them more accessible.**

Also a caution that in proposing this tax the expectation is that alternative medications would be used. This includes non-steroidal anti-inflammatory drugs (NSAIDS). These are not recommended in the elderly population due to the increased incidence of GI ulceration/bleeds which can be fatal. These are also not recommended when a patient is taking anticoagulants or steroids (like prednisone).

Finally, it is our understanding that one generic opioid manufacturer (Teva) has discontinued sales in New York already due to the threat of the tax (in 2018) so as a result New York is already paying more for oxycontin today since only the brand-name version of the drug is available. We know from experience when the State tried to implement another version of this proposal last year, manufacturers and distributors refused to ship into NY to avoid paying tax.

Please Reject this Harmful, Unfair Tax on Patients in the Final State Budget

Pharmacies would like to continue to partner with the State and local communities to reduce inappropriate use of opioids and help direct patients to needed prevention and treatment efforts. However, a significant excise tax placed on pharmacies and our most vulnerable patients is unfair and misdirected. For these reasons we would ask that this proposal, as written, be rejected in the final State Budget so pharmacies and patients would not be put in the untenable position of paying this tax.