SJR-29 EpiPen: pricing. (2015-2016)

Senate Joint Resolution No. 29

CHAPTER 191

Relative to EpiPen.

[Filed with Secretary of State September 09, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 29, Hernandez. EpiPen: pricing.

This measure would urge the United States Food and Drug Administration to reconsider its denial of approval for generic alternatives to the epinephrine auto-injector EpiPen, would urge the Congress of the United States to investigate the impact that Mylan NV's monopoly has had on price increases for EpiPen, and would urge the Congress and the President of the United States to take action to limit the unrestrained ability of drug manufacturers to increase prices based on what the market can bear.

Fiscal Committee: no

WHEREAS, Millions benefit from lifesaving drugs and devices, including Americans with allergies that can be treated by epinephrine; and

WHEREAS, Last year, doctors wrote 3.6 million prescriptions for EpiPen, which stops allergic reactions by quickly and safely injecting epinephrine; and

WHEREAS, In 2007 Mylan NV purchased the rights to EpiPen and immediately began raising its price. In 2008 and 2009, Mylan raised the price by 5 percent, and at the end of 2009 it raised the price by another 19 percent. From 2010 to 2013, Mylan imposed a series of 10-percent price hikes. And from the fourth quarter of 2013 to the second quarter of 2016, Mylan raised EpiPen prices 15 percent every other quarter; and

WHEREAS, A pack of two EpiPen devices now has a list price of over $600, an increase of 548 percent since Mylan began selling the drug, according to Truven Health Analytics; and

WHEREAS, The formula of EpiPen did not change, and it is no more effective in protecting against allergic reactions in 2016 than it was in 2007; and

WHEREAS, During the same time, Mylan began an aggressive marketing and lobbying effort to increase demand for EpiPen, which included the passage of federal and state legislation. The United States Congress passed the School Access to Emergency Epinephrine Act in 2013 to provide an incentive to states to boost the stockpile of epinephrine at schools. A number of states, including California, passed laws requiring public schools to have epinephrine. In 2010, the United States Food and Drug Administration (FDA) changed its recommendations so that two EpiPen devices be sold in a package instead of one and that they be prescribed for at-risk patients, not just those with confirmed allergies; and

WHEREAS, The rising cost of EpiPen has implications for taxpayers. Over half of California's children are insured through Medi-Cal, therefore the taxpayers are paying a large share of the cost of this medication; and

WHEREAS, Mylan has an effective monopoly that it is using to maximize profit because there is no equivalent generic competitor; and

WHEREAS, Patients who have to pay retail prices are being forced to buy EpiPen abroad, where it is cheaper, and are resorting to other devices that deliver epinephrine, including do-it-yourself syringes; and

WHEREAS, Even some ambulance providers in California have stopped the use of EpiPen to treat allergic shock and instead are drawing from a vial and injecting epinephrine by syringe. First responders in Seattle have developed such a kit and have sold them to public health agencies in five other states. There is a demonstration project in New York called "Check and Inject New York" that trains first responders to use syringe epinephrine kits in place of EpiPen to save money; and

WHEREAS, After recent widespread criticism, Mylan said it would expand access and increase benefits to programs that it uses to help consumers pay less, but those changes do not alter the prices that insurers and employers pay. Those institutions will still face the brunt of the impact from the price hikes; and

WHEREAS, Offering copayment assistance and free product to consumers is part of the standard playbook for manufacturers of expensive drugs. Efforts by drug makers to shield consumers from the out-of-pocket costs associated with the rapidly increasing cost of their medications ignores the fact that insurance companies bear the brunt of these unreasonable price increases, which results in higher premiums for all consumers; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature declares unnecessary and unexplained increases in pharmaceutical pricing is a harm to our health care system that will no longer be tolerated because the system cannot sustain it; and be it further

Resolved, That the Legislature urges the United States Food and Drug Administration to reconsider its denial of approval for generic alternatives to EpiPen; and be it further

Resolved, That the Legislature urges the Congress of the United States to investigate the impact that Mylan's monopoly has had on the price hikes for EpiPen; and be it further

Resolved, That the Legislature urges the Congress and President of the United States to take action to limit the unrestrained ability of drug manufacturers to increase prices based only on what the market can bear rather than on providing a fair return on investment; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, to the Secretary of the United States Department of Health and Human Services, and to the Commissioner of Food and Drugs, and to the author for appropriate distribution.