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## State Intervention Won't Lower Drug Prices

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Some legislators in Annapolis (upon instigation by my old pal Vinnie DeMarco) are attacking high prescription drug prices. As is usual about many proposals before the Maryland General Assembly, their answer to this problem is more government intervention in the market. There are certainly problems with drug prices in the U.S., but this proposal is not the answer we need.

In a supporting op-ed in the Baltimore Sun, Dr. Laura Wen of Baltimore justifies state action by pointing to a high-profile drug price case that stoked national outrage: “Martin Shkreli, then CEO of Turing Pharmaceuticals, stoked national outrage when he defended raising the price of the 62-year-old anti-parasite drug Daraprim from \$13.50 to a whopping \$750 per pill.”

Walter Olson of the Cato Institute explains that it is the heavy hand of Big Government that allows Shkreli to do this:

But under the distinctive food and drug laws of the United States you can't just start turning out pills in your factory to compete with Shkreli, at least not without compiling and submitting a huge pile of regulatory paper with the U.S. Food and Drug Administration. This calls on the services of lawyers and scientists, costs a lot of money, and takes time, and you might or might not be able to recover the costs from the relatively small pool of users.

Dr. Wen specifically talks about the problems in the generic drug market. It should be pointed out that there may not be much of a problem with generic drug pricing. As ExpressScripts, a company that manages pharmacy benefits and studies drug price trends, notes, “The Express Scripts Prescription Price Index shows that, since 2008, the average price of brand drugs has almost doubled, while the average price of generic drugs has been cut roughly in half.”

There are, of course, instances when generic drugs are quite expensive. During a hearing on the state proposal, Maryland Assistant Attorney General Joshua Auerbach testified that “when markets are working right, generics drugs are often manufactured by numerous companies and these companies are competing with one another.” He then went on to say that this was not happening, in part (or whole) because of “unethical” behavior by pharmaceutical companies.

Auerbach is right that the market isn't working. But there is a reason that the market for generic drug prices is so flawed. It's not because free market principles cannot work in the drug market; instead, this market has been heavily distorted by government action. If drug company executives are acting unethically, then it's because the law incentivizes them to do so. Cato's Olson details how:

Among laws that used the "marketing exclusivity" technique to award monopolies on older drugs, on the logic that otherwise no one would step forward to handle the heavy costs of getting those drugs regulatory clearance, were the Drug Price Competition and Patent Term Restoration Act of 1984, better known as the Hatch-Waxman Act, originally introduced by Sen. Charles Mathias (R-Md.), and the Orphan Drug Act of 1983, introduced by Rep. Henry Waxman (D-Calif.) In various ways that backers appear not to have foreseen, opportunistic actors have succeeded in seizing the legal-monopoly status made available for some of these compounds without always providing as much public benefit in return as had been expected. To enforce their legal monopoly, some of these companies sue rival drugmakers to force them to pull their competing offerings off the market.

Unfortunately, the proposal being considered in Annapolis is another in a long line of **bad ideas** on how to deal with drug prices from **Maryland politicians**. Given that there will soon be a debate in Congress over the fate of Obamacare, there could be an opportunity at the federal level to reform or repeal the federal laws that have caused the significant distortion of the prescription drug market. Focusing on this avenue for reform will do far more to help patients than what legislators are debating.

I am no apologist for high drug prices. I sympathize with patients who have trouble paying for the drugs they need. I am glad to see that the industry offers drug assistance programs to help individuals who cannot afford the drugs they need. The proposed legislation being pushed by DeMarco and his allies is not the way to address this issue, however. Imposing more government rules is not the way to fix problems caused in the first place by government regulation.