New Jersey
Appleseed

Testimony of New Jersey Appleseed Public Interest Law Center
with respect to A-2418 (Prescription Drug Affordability Board)
Before the Assembly Financial Institutions and Insurance Committee

May 14, 2021

Chairman McKeon, Vice-Chair Lampitt and members of the Committee:

Thank you for this opportunity to submit written testimony to the Committee on this precedent-setting bill that has been in the making now for almost two years. I will not be presenting this statement orally to the Committee, because the NJ for Affordable Drugs coalition has selected four other witnesses to present our position to the Committee.

My name is Renée Steinhagen. I am the Executive Director of New Jersey Appleseed Public Interest Law Center ("NJA"), a nonprofit, nonpartisan legal advocacy center based in Newark that has been active in health care reform issues since its inception in 1998. We are a founding member of the New Jersey for Healthcare Coalition, which has been working to bring guaranteed, high-quality, affordable health care to all New Jersey resident, as well as the NJ Affordable Drugs coalition, which was organized in the Fall of 2019. As part of both coalitions, NJA assists coalition members primarily with respect to strategy, policy and legal analysis.

The establishment of a Prescription Drug Affordability Board ("PDAB") is a welcome regulatory concept. New Jersey, like other U.S. states, has the authority to regulate health care insurers and determine maximum payment levels for healthcare and other **public goods and services** in markets with little or no market competition. Consistent with such authority, the PDAB would build on various regulatory precedents for drugs that have had only a few suppliers, as well as, more generally, the rate-setting conduct of the Board of Public Utilities ("BPU"). New Jersey sets consumer rates for public utilities such as electricity and water because they are important to the public's well-being and controlled by just a few companies. Similar considerations are applicable to certain prescription drugs, which people need to maintain their health.

Specifically, as set forth in A-2418, the PDAB would review certain high-cost drugs that create "affordability challenges" for the State health care system as well as high out-of-pocket expenses for patients. Because drug costs involve many complicated issues and affect numerous stakeholders, the PDAB constitutes an appropriate mechanism to bring all the stakeholders together, increase procedural and substantive transparency regarding drug prices, and, if given,

New Jersey Appleseed
Public Interest Law Center of New Jersey
50 Park Place, Suite 1025
Newark, New Jersey 07102

Phone: 973.735.0523 Fax: 973-710-4653
Email: renee@njappleseed.org
Website: www.njappleseed.org

the authority, set an upper payment limit (UPL) for certain drugs sold in the State and/or permit importation of those drugs at or below that price limit. The ability to set upper price limits or to permit importation is certain to lower the overall costs of prescription drugs for all. For additional information about a PDAB, I am attaching to this statement a "Frequently Asked Questions" sheet prepared by NJ for Affordable Drugs, which may also be found at https://drive.google.com/file/d/10Pq0545cftMB8JVuY63FaBQP4_Y_ajyF/view?usp=sharing

There is little doubt that A-2418 is a good start to introducing the concept of a PDAB and setting the Board on a path to conduct cost reviews of certain drugs that create an affordability challenge to New Jersey's health system and its patients. The Board, however, is only authorized to issue regulations, conduct cost reviews and issue several different reports, over different periods of time. It cannot, prior to receiving affirmative approval by the Legislature or the Governor and Attorney General, actually regulate any specific drug or permit importation of that drug. The Board is able to make recommendations for government programs that are separate from those governing private payers, and the legislation is difficult to read, understand and lacks clarity on key issues.

It is our understanding that the amendments currently being considered by this Committee do address several of the weaknesses in the bill. All of them reconcile the PDAB with New Jersey administrative law and practice, and should be approved by this Committee. Notwithstanding, there are several other changes that NJA would like to see made to improve the operation and outcome of the PDAB to better protect NJ residents and the cost of healthcare generally in the State. Primarily, in accordance with the National Academy for State Health Policy's (NASHP) model bill, we suggest that the proposed statute give the PDAB the authority to regulate certain drugs by setting UPLs or permitting importation of certain drugs after a cost review without seeking further approval from the Legislature or the Governor and Attorney General. If such authority is granted, the bill should also reduce the number of reports required to be produced by the PDAB, which now renders it more of an advisory board than a regulatory one.

Thank you for your consideration,

Respectfully submitted,

/s/Renée Steinhagen
Renée Steinhagen