Testimony of New Jersey Appleseed Public Interest Law Center with respect to A-1747 (Prescription Drug Affordability Board) Before the Assembly Health Committee ((May 24, 2022)

Chairman Conaway, Vice-Chair Lampitt and members of 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 residents, as well as a member he 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.

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 about several years. Given the stalemate in Congress regarding legislation directed at lowering drug prices, we are especially grateful that New Jersey seems ready to move on this issue; and even if Congress were to permit Medicare to negotiate drug prices with the manufacturers, this bill would still be needed and would provide a different mechanism to lower the price of drugs and rein in costs to consumers and other purchasers.

The same is true with respect to more recently introduced state bills (A-2839, A-2840 and A-2841) that ostensibly share similar goals of making certain prescription drugs more affordable to consumers. Those bills are good as far as they go, but they are limited in scope, merely shift costs, and lack enforcement mechanisms; and thus, constitute no more than a Band-Aid on the larger problem of the numerous medications that New Jerseyans struggle to afford every day. To give you an idea of the sweep of the problem, drug makers raised prices on 866 products in January of this year, including cancer and diabetes medications, according to an analysis done by Rx Savings Solutions, as reported in the *Wall Street Journal* on January 30 in an article that can be seen at https://www.wsj.com/articles/drugmakers-raised-prices-by-6-6-on-average-early-this-year-11643538782.

The establishment of a PDAB is a welcome regulatory concept. A May 2020 survey of New Jersey residents by the Altarum Healthcare Value Hub found that 56% believed that

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government should work on addressing high health care costs, including prescription drugs; 72% believed that health care costs are so high because drug companies charge too much money; and 88%, across party lines, favored the establishment of PDABs. Those survey results are available at https://www.healthcarevaluehub.org/advocate-resources/publications/new-jersey-residents-worried-about-high-drug-costs-support-range-government-solutions. Clearly, a PDAB is a good step forward that indicates to consumers that New Jersey legislators are acting on their behalf.

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 only a few suppliers, as well as, more generally, the rate-setting conduct of the Board of Public Utilities. 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 prescription drugs, which people need to maintain their health.

Specifically, as set forth in A-1747, 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, the authority after studies have been conducted and the legislature approves the Board's plan of action going forward, to set an upper payment limit 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 payment limits or to permit importation is certain to lower the overall costs of prescription drugs for all.

The recent amendment to remove a requirement for the Board to review the use of a reverse auction market as a possible approach to reduce pharmaceutical drug product costs in the State, and instead to review the options of (a) revising the number of permitted cost-sharing tiers and the limitations on cost-sharing amounts; (b) enhancing distribution of specialty drugs; (c) developing new supply pipelines; (d) facilitating the availability of new biological products; and (e) promoting the administration of pharmaceutical drug products in the most cost effective settings, is a good thing. The more alternative approaches the Board may explore, the more likely it is to come up with a mix of recommendations that together will solve the pressing issue of affordability. 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://njappleseed.files.wordpress.com/2022/05/pdab-testmony-faqs-may2021.pdf

There is little doubt that A-1747 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. Most importantly, it sets up a Board that will operate in a transparent manner, will be constituted and staffed by experts, will hold meetings that are explicitly subject through amendment to the Open Public Meetings Act, will engage all stakeholders through hearings that will be held pursuant to procedural and substantive regulations, and generally, establishes an independent regulatory body that will be able to recommend and enact solutions to what has become an intolerable problem in our state and

country: the excessive cost of pharmaceutical drugs that are needed by New Jersey residents regardless of their ability to pay.

We must note, however, that pursuant to this legislation the Board is only authorized to issue regulations and cost reviews, and it is required to issue several different reports at different points in time after the bill is enacted. It cannot, prior to receiving additional affirmative approval by the Legislature, actually regulate any specific drug or permit importation of that drug or take any other action, except that authorized by an amendment "requiring the Board to take appropriate measures to eliminate, restrict or revise practices that are designed to increase or sustain disproportionate profit margins . . . in specific areas of the pharmaceutical supply chain without promoting improvements in the quality of care . . . or reducing the costs of pharmaceutical drug products . . .." Moreover, the Board is only able to make recommendations for government programs that are separate from those governing private payers (which the Board will hopefully in future years will be able to regulate); and from our perspective, the legislation is unnecessarily difficult to read and understand how all the different reports, which have different due dates, cohere and relate to one another.

So, let me repeat, this bill does not authorize the PDAB to set an upper payment limit, permit importation of any specific drug or implement any other regulatory policy. It is only after the PDAB conducts certain cost reviews, issues several different reports, including a report that would evaluate the pros and cons of taking any one policy, and this Legislature reviews those reports/recommendations and acts again, that the PDAB may have the authority to regulate any specific drug/or permit importation of those drugs (in accordance with the National Academy for State Health Policy's (NASHP) model bill).

On the other hand, although we in the consumer advocacy community believe that the ability to set upper payment limits or permit importation is certain to lower the overall costs of prescription drugs for all, with little or no adverse consequences for consumers, we support this bill, as a necessary step toward that end. We are glad to see that the current bill addresses some of the concerns voiced during the last session, by way of language which reconciles the PDAB with New Jersey administrative law and practice in many ways. In particular, we welcome added language that makes clear that when the Legislature takes action to approve a plan submitted by the PDAB, technical or substantive modifications are not to be deemed a rejection of the plan. Nonetheless, the problem remains with the bill that, failing legislative approval within 90 days, the PDAB plan comes to naught and thus, we urge this Committee to make amendments necessary to ensure that this does not occur, and that the PDAB continues to exist and address the problem of excessive prescription drug prices even if the Legislature rejects any or all of its initial policy recommendations. This issue still needs to addressed.

Thank you for your consideration,

Respectfully submitted,

/s/Renée Steinhagen
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