WAC Inflation Penalty

Policy Description

Manufacturers will be required to pay a penalty of for the additional gross revenues generated in Maryland deemed attributable to the increases in Wholesale Acquisition Cost (WAC) of a drug above the rate of inflation of that year. The state would establish a baseline WAC and calculate the inflation-adjusted WAC from that baseline annually when the manufacturer changes the WAC of a prescription drug. The resulting penalty amount would be based on the difference between the inflation-adjusted baseline WAC and the current WAC, multiplied by the units sold in Maryland. The penalty would be paid on an annual basis. In the case that the manufacturer has no WAC changes in a year, a penalty would not be assessed to the manufacturer, and the state would re-calculate the tax to reflect a new inflation-adjusted baseline.

PDAB Implementation Process and Timeline

Phase 1: Strategic Assessment (4 Months): PDAB and state partners conduct a feasibility assessment, calculation and methodology adjustment, and fiscal modeling to estimate potential revenue and impact on consumer out-of-pocket costs.
Phase 2: Operational Design (5 Months): Staff develops operational protocols for baseline WAC tracking and annual calculations.
Phase 3: Legislative Phase (4 Months): Introduction of enabling legislation to authorize the penalty and create the collection framework.
Phase 4: Program Launch (Milestone): Full program launch; initial baseline WACs established for enforcement.

Other State Examples

While no states currently enforce a WAC inflation penalty structured like Maryland PDAB's proposal, states have proposed and/or enacted laws imposing penalties on prices that exceed a legislatively defined reference price.

- **Illinois:** Enacted the *Pharmaceutical and Health Affordability Act* (2024), which targets "price gouging," defined as WAC increases of 30% or more in one year (or 50% over three years) for essential off-patent or generic drugs.
- **Minnesota:** Passed *Chapter 57* (2023) prohibiting "excessive" price increases for generic drugs, defined as hikes exceeding 15% annually or 40% over three years. Despite legal challenges, it established a model for remitting excess revenue to a state special fund for in-state drug manufacturers.
- **Connecticut:** Proposed legislation (2024/25) to prohibit selling identified drugs above a reference price (WAC plus inflation), with a civil penalty equal to 80% of the revenue earned above that cap.
- **Massachusetts:** Introduced *Bill S.2774*, which proposed an 80% penalty on the "excessive" portion of a drug's price, defined as costs exceeding the original market price adjusted for the three-year average of the consumer price index.