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California must tackle skyrocketing drug prices

By Assemblymember Jim Wood
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It's not a secret that drug companies are pricing lifesaving medications at ridiculous rates.

We've seen the stories of Pharma Bro, we've read about Big Pharma's Q1 profit margins. What drug companies are trying to keep secret though, is Pay-for-Delay, a sneaky tactic that brand name and generic drug companies are using – and getting away with — that costs Americans $3.5 billion per year in higher health care costs.

Pay-for-delay is an arrangement in which brand-name pharmaceutical companies pay competitively, lower-priced generic companies "to hold its competing product off the market for a certain period of time" in an effort to delay market competition and continue reaping the profits.

I have partnered with California's Attorney General Xavier Becerra and introduced AB 824 to stop pharmaceutical companies from pocketing billions in profits by using these "pay-for-delay" tactics.

Initially born out of antitrust litigation, the practice began in the early 2000s as a way for generic drug companies to gain entry into the market where big, brand-name pharmaceutical companies held lengthy patents.

But this process is risky; it requires brand-names to "defend the validity of its patents." To avoid larger loss, brand-names began paying competing generic companies to stay off the market for a contracted amount of time. Rather than face expensive litigation, brand-names began paying generic companies that challenged their patents a portion of their profits, and allowed them a seemingly generous entry into the market shortly before their patent expired.

This worked out quite well for big pharmaceutical companies. For nearly 20 years they have kept low-priced competition off the market by paying them to stay out. For generic companies fighting for a piece of the pharmaceutical pie, pay-for-delay allowed them to share in the profits of the brand-names.

Sounds anti-competitive, right? I think so. It is a strategy we have long fought against in many other venues. In such a win-win for pharmaceuticals, the losers have never been so clear.

When brand-name pharmaceuticals pay low-cost generics to stay off the market, consumers lose access to safe, low-cost medications. Generic manufacturers can produce less expensive drugs because their approval process is minimal — they do not have to invest in research, development and testing, and generics can be as much as 90% less than brand-name prices.

According to the IMS Health Institute, generic drugs saved the U.S. health care system $1.67 trillion from 2007 to 2016.

But what does this really look like for Americans? If a brand-name drug is sold for $300, that same generic may be sold for $30. 4 1 With many Americans living with chronic illnesses or on low-income budgets, these costs are astronomical.

When drug companies use these quiet pay-for-delay agreements with generic drug manufacturers, it hurts consumers twice – once by delaying the introduction of an equivalent generic drug that is almost always cheaper than the brand name and again by stifling additional competition when multiple generic companies begin producing even less expensive generic equivalents.

AB 824 seeks to end this backroom practice, bring more generic drugs into the marketplace and improve the affordability of prescription drugs by giving the Attorney General stronger tools to crack down on pharma's pay-for-delay schemes.

Patients deserve affordable and fair access to medications. These pay-for-delay tactics by drug companies take money straight from the wallets of consumers and is just plain wrong.

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Editor's Note: Jim Wood, D-Santa Rosa, is a member of the California Assembly, representing the 2nd District.