Summary of Prescription Drug Affordability Proposals

- **Eliminating Pharmacy Benefit Manager (PBM) gag rules.** This would allow pharmacists to provide information to consumers about lower cost drug options. PBMs determine which drugs are included in formularies for most health insurance plans in Maryland. In some cases, PBMs have instituted gag rules on pharmacies that prohibit the pharmacist from telling consumers that if they paid cash they would pay a lower price than if they used their insurance card.

- **Instituting transparency rules for PBMs and drug corporations.** This would be a first step in eliminating the incentives for raising the list price and could help lower patient cost-sharing. PBMs and drug corporations have long used confidentiality agreements to prevent the public from knowing how much of a rebate the PBM is getting from the drug corporations. The problem is that the rebate is based on the difference between the published or list price and the actual transaction price. The larger the difference between the list and transaction price the larger the rebate. As a result, there is an incentive for drug corporations to increase the list price. Patients' cost sharing is typically based on the list price and therefore increases as the list price increases. This is a major reason why patients are paying more for drugs each year.

  Drug companies have used a variety of justifications to explain why the price of a new drug is so high or why they need to increase the price of an existing drug. This price transparency law would force the drug companies to explain why they have set a high price or raised their prices.

  We intend to propose using the NASHP recommended model for transparency that would require transparency reporting for drugs that cost patients more than $30,000 annually. The information obtained from these transparency rules would facilitate review and provide data necessary for the rate setting commission (see below.)

- **Creating a drug cost review commission for high cost drugs.** The price transparency laws will shame the drug companies into keep their prices low but it will not actually lower the prices or set the prices so that people can actually afford the drugs.

  Maryland has used a rate setting commission to set hospital rates since 1974 and it is well established in Maryland. The federal government has endorsed it and hospitals understand the need for rate setting. This law would establish a rate setting commission similar to Maryland's hospital rate setting commission in order to expand access to life-saving drugs.

  This law would target brand name drugs as Maryland's current price gouging law targets generic drugs Most of the spending increases have occurred in specialty drugs that cost over $30,000 annually. They are 1% of drug sales but 30% of drug spending. The very high prices mean that most people cannot afford these drugs. For example, Hepatitis C, the infectious disease that kills more people in Maryland than any other disease (more than AIDS), can be completely cured with a new drug but only 15% of the population

can afford it.

We are proposing a public utility model like the HSCRC but only for high priced drugs. For drugs costing over $30,000 a year, the prescription drug corporation would be required to explain to Maryland the rationale for the high cost and the independent state agency would then set the reasonable amount to pay, similar to the process Maryland uses to set hospital rates.