

Dormant Commerce Clause “Dos and Don’ts”

Do This	Type of Drug Cost Policy Legislation	Don’t Do This
<p>Create a legislative record about the negative impact of high drug prices on public health and patient access to treatment.</p> <p>Have an understanding of current, complex drug industry business practices.</p> <p>Create a regulatory process that solicits or accepts public and stakeholder input.</p>	Applies to all policy proposals	<p>Do not legislate changes in business practices that create a significant burden on the industry, relative to the level of benefit state residents gain from the policy.</p> <p>Do not attempt to control or limit manufacturer list prices or specifically limit manufacturers’ ability to increase prices.</p>
<p>Require industry reporting of information that is already public, or ensure proprietary data is kept confidential.</p> <p>Use industry-reported proprietary data in ways that do not identify a product or a company.</p>	Drug price transparency and reporting, pharmacy benefit manager, or drug manufacturer	<p>Do not make proprietary price data public.</p>
<p>Specify that drug reimbursement/payment rates will be developed taking into account an array of important factors, such as the affordability of the drug product.</p>	All-payor drug rate setting	<p>Do not link in-state drug reimbursement rate setting to rates paid outside the state or country.</p> <p>Do not create legislation requiring the specific use of another state’s or country’s drug reimbursement processes.</p>
<p>Limit sales of imported product to in-state entities and consumers .</p> <p>Limit the amount of product that can be dispensed at any one time to prevent profiteering by re-sale in another state.</p>	State-administered wholesale drug Importation program	<p>Do not allow imported products to be sold to entities that might resell them outside of the state for a high price.</p>