

New Jersey: Senator proposes tax credit for EpiPen retailers



David M. Kall | Thursday, September 8, 2016

Much has been made in recent weeks of what the media has characterized as manufacturer Mylan's **steep**, **soaring**, and **massive** price increase of the **EpiPen**, an epinephrine injection system that provides emergency treatment for life threatening allergic reactions. More specifically, the **Guardian** reported that when Mylan acquired the rights to EpiPen in 2007, the price was \$56.64. Since then, that price has increased 461 percent, to \$317.82. Quoting a **letter** that several Democratic senators, including Bernie Sanders, Elizabeth Warren and Sherrod Brown, sent to Mylan's chief executive officer, Heather Bresch, the paper highlighted the issue:

[M]aking sure the EpiPen is readily available for use is a critical part of life for millions of Americans living with severe allergies...The EpiPen, however, has become so exorbitantly expensive that access to this life-saving combination product is in jeopardy for many Americans. Mylan's near monopoly on the epinephrine auto-injector market has allowed [Mylan] to increase prices well beyond those that are justified by any increase in the costs of manufacturing the EpiPen.

Republican Sen. Chuck Grassley of Iowa has weighed in with his own concerns. In a **dispatch** to Bresch, the senator posed numerous queries in an effort to "fully understand the pricing," such as what analyses Mylan conducted to arrive at EpiPen's price, what Mylan's advertising budget for the EpiPen is, how the product has improved over time, and what assistance is available to help defray consumers' costs.

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New Jersey

One state lawmaker, New Jersey's Sen. Kevin O'Toole, has [announced](#) his intention to give EpiPen retailers a tax credit to encourage them to keep consumer prices affordable. According to Sen. O'Toole, the current cost for the pair of pens that consumers normally need to carry around is \$609. His legislation would allow any retailer who sells an EpiPen at the 2009 price of \$100 to qualify for a tax deduction for the difference.

Attacking Mylan's "monopolistic pricing tactics" as both unconscionable and unjustified, Sen. O'Toole takes the position that "[n]o one should ever have to worry about being able to afford lifesaving medicine."

This is not Sen. O'Toole's first EpiPen proposal. Last year, he was the prime sponsor of a law requiring all New Jersey schools to maintain a supply of epinephrine that a school nurse or trained designee can administer to any student who is having an anaphylactic reaction. In January 2016, the governor signed the bill, extending the same requirements to New Jersey youth camps.

Mylan part of a "systemic problem"

Describing itself as one of the largest generics and specialty pharmaceutical companies in the world, Mylan asserts that it remains dedicated to the mission it began with in 1961, helping people all over the world "gain access to affordable medicine." In [EpiPens and Inversions: How U.S. Taxpayers Are Underwriting Mylan's Corporate Profits](#), the Institute on Taxation and Economic Policy (ITEP) quoted Bresch as wanting people to blame the system, not her, for Mylan's failure to keep EpiPen affordable, because it is Congress and the insurance and health care industries that are responsible. Though that seems like an unsavory position, ITEP acknowledged that "[i]t is easy enough to pick apart that flimsy defense... But, in truth, Mylan's price gouging and brazen corporate greed [are] part and parcel of a larger, systemic problem that we cannot count on corporations to self-police."

ITEP is referring to the practice of corporate inversions, defined as "a scheme in which a U.S. company buys a smaller, foreign multinational and subsequently claims the merged company's headquarters are housed abroad." Inversions are a topic of some controversy; in April, we [addressed](#) Philadelphia's attempts to exclude tax inversion companies from city contracts. Similarly, last December, we [described](#) a proposal in New Jersey aimed at rendering an inverted domestic corporation ineligible for various types of financial aid, like state economic development grants and reimbursement of taxpayer-subsidized programs, such as Medicaid.

In [Mylan to U.S. Government: We Want Everything for Free](#), ITEP noted that in early 2015, the manufacturer had completed a \$5.3 billion merger with a foreign branch of Abbott Laboratories to form a Netherlands-based company, also named Mylan. ITEP underscored the fact that John Sheehan, Mylan's chief executive officer at the time, declared that the prospect of paying an income tax rate "in the high teens" to its new Dutch homeland was a "big driver" in this decision. ITEP pointed to the contradiction in Mylan's position when it was faced with a hostile takeover from Teva Pharmaceuticals in June 2015, asserting that Mylan had "suddenly rekindled its love affair with Uncle Sam, or at least with the regulatory protections the U.S. government provides." By the end of July 2015, Teva had [withdrawn](#) its bid.

ITEP criticizes Mylan for earning a majority of its revenue in the U.S. but paying very little in taxes to the U.S. government. In 2015, its US profits were \$466 million, but it paid a "measly" 2.9 percent in federal taxes on that profit. Tying Mylan's inversion and EpiPen pricing strategies together, ITEP calls this "fairly damning evidence that the company is maximizing its profits at the expense of the American taxpayer...."

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Mylan's shameless effort to use U.S. taxpayers as a profit center, both by avoiding federal income taxes and by jacking up prices of medical supplies, should prompt policymakers to closely examine all benefits lavished directly and indirectly on Mylan and its fellow corporate inverters and, if possible, revoke them."

Likely under pressure from all of this, on Aug. 29, 2016, Mylan **publicized** its intention to launch, in the next several weeks, a generic but identical version of the EpiPen at a list price of \$300 per two-pack.



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