April 5, 2021

The Honorable Judy Lee
Chairwoman
North Dakota Senate Human Services Committee
600 East Boulevard
Bismarck, ND 58505-0360

Dear Chairwoman Lee,

It is our understanding that HB 1032, pharmaceutical transparency legislation, was voted for reconsideration by your committee on April 1. Previously, the committee had voted 5 to 1 to recommend to “do not pass HB 1032” and the Council for Citizens Against Government Waste (CCAGW) appreciates that decision. On behalf of the 4,461 members and supporters of the CCAGW in North Dakota, I urge you to continue to oppose HB 1032.

CCAGW remains concerned that HB 1032, which is supposed to provide drug cost transparency, will instead create confusion and provide a lot of data that will not be useful for citizens in North Dakota. The legislation uses the wholesale acquisition cost (WAC) and a price increase of 10 percent or more within 12 months to trigger the reporting requirements, with a possible fine of as much as $10,000. The WAC is essentially the list price and not what a patient pays at the pharmacy counter. However, the data may be useful to competitors who could figure out what their rivals charge, as was discussed in a July 2, 2015 Federal Trade Commission policy paper that CCAGW referenced in our March 8 letter and March 16 testimony opposing this legislation.

The private negotiations which occur among prescription drug companies, wholesalers, pharmacy benefit managers (PBMs) and the drug benefit plans they design for their clients, like self-insured employers, unions, commercial health plans, state government plans, and Medicare Part D plans, can be complex but are also robust and competitive. Each stakeholder depends on the other for the market to work. One way to think of this is when a consumer goes into a large retail store to purchase a new television, they want to know what they will pay at the counter. They do not know what the retailer negotiated with wholesaler, or what the manufacturer negotiated to obtain the electronic circuit boards that are needed to operate the television. This kind of information is not relevant to the final price they pay.

CCAGW continues to believe that this legislation is a fishing expedition that eventually could lead to price controls, which are extremely destructive to innovation, cause shortages, and never solve the problem they were intended to fix. While drug prices in other countries are generally lower than in the U.S., that occurs because their government-run, socialistic healthcare systems regulate prices and ration care. In the mid-1980s, Europe led the U.S. in pharmaceutical research and development by 24 percent, but by 2015 they were behind by 40 percent due to implementing price controls.
We also understand there may be amendments offered to HB 1032 that would apply the provisions of the legislation solely to pharmaceutical manufacturers and PBMs. This would create havoc in the complex and interconnected supply chain, which only works effectively if every participant is operating under the same rules.

There are better ways to lower drug prices and they include urging your congressional delegation to continue to make sure the Food and Drug Administration gets new drugs approved, both brand name and generic, in a timely way. You should also encourage your federal representatives to create better trade deals so that economically advanced countries pay their fair share of biopharmaceutical research instead of continuing to free-ride on American citizens and taxpayers. These actions would be a far more effective way to help bring down the price of prescription drugs than passing this legislation.

Again, I urge you to continue to vote against HB 1032.

Sincerely,

Thomas Schatz