April 9, 2021

North Dakota Senate
600 East Boulevard
Bismarck, ND  58505-0360

Dear Senator,

It is our understanding that you will soon consider HB 1032, pharmaceutical transparency legislation, on the Senate floor. On behalf of the 4,461 members and supporters of the Council for Citizens Against Government Waste (CCAGW) in North Dakota, I urge you to continue to oppose HB 1032.

CCAGW has been concerned since the introduction of HB 1032, which is supposed to provide drug cost transparency, that it will not work as intended and instead create confusion and provide a lot of data that will not be useful for citizens in North Dakota. It will also be costly to taxpayers.

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 if a health insurer, drug manufacturer, or pharmacy benefit manager violates the law. But 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 a March 8 letter and March 16 testimony opposing this legislation.

In listening to oral testimony given to the Senate Human Services Committee on March 16, CCAGW found it instructive that in states that passed similar legislation over the past few years, like Maine and Vermont, there have been no significant savings or decreases in drug pricing even though there have been increases in costs to run the programs. It is likely this will also occur in North Dakota if the legislature passes HB 1032.

The private negotiations, which occur among prescription drug companies, wholesalers, and pharmacy benefit managers (PBMs) that design drug benefit plans 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.

There are better ways to lower drug prices, and this includes 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.

I urge you to vote against HB 1032.

Sincerely,

Thomas Schatz