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May 3, 2021

Minnesota Senate Leadership
Minnesota Senate
95 University Avenue W.
St. Paul, MN 55103

Dear Senate Leadership,

A House and Senate conference committee will soon consider [SF 972](#), the Omnibus Commerce Policy and Finance bill. This legislation includes language from [HF 801](#), the Prescription Drug Affordability Act, which is a price control bill that will fail to reduce pharmaceutical prices, distort the marketplace, and raise constitutional questions over patents. On behalf of the 35,122 members and supporters of the Council for Citizens Against Government Waste (CCAGW) in Minnesota, I ask that you urge your conferees to strike all language from HF 801 from the omnibus legislation.

HF 801 would create a seven-member Prescription Drug Affordability Board, along with an executive director and staff, to review prescription drug prices. The legislation also creates a 12-member Prescription Drug Affordability Advisory Council to represent stakeholders, including patients, the healthcare industry, and the pharmaceutical business. The board will be charged with reviewing brand name drugs, biologics, generic drugs, and biosimilars based on increases in the wholesale acquisition cost (WAC) within certain time periods or introductory prices. After investigating and considering several factors, if the board believes the drug price is too high, it will determine an upper payment limit for all public and private purchases and payments. If an entity does not comply with the upper payment limit, the Office of the Attorney General may pursue remedies or appropriate criminal charges if it believes an excessive profit is being made.

The state establishment of an upper payment limit is a price control. Price controls create market distortions and never work as intended. Furthermore, triggering the entire investigative process based on the WAC is faulty. The WAC is essentially a list price and does not represent what a patient will pay at the pharmacy counter after negotiations among pharmaceutical companies, insurers, pharmacy benefit managers, and pharmacies have occurred.

Price controls also create shortages and damage innovation. One only needs to remember or have studied the price controls instituted in the 1970s and the damage they caused. The U.S. pharmaceutical market has already been distorted by government-instituted programs like the Medicaid drug rebate, the 340B drug discount program, the 70 percent rebate in the Medicare Part D coverage gap, and the Department of Veterans Affairs prescription drug program. Adding more price controls will only create further distortions and severely harm U.S. biopharmaceutical research and development.

The impact of price controls has already been seen in Europe. In 1990, [\\$16.7 billion](#) was invested in biopharmaceutical research, with European countries contributing 59.2 percent and the U.S. contributing 40.8 percent. But because Europe adopted price controls during the 1980s and 1990s, that investment shifted. By 2017, of the \$95.7 billion invested in biopharmaceutical research, the U.S. contributed 58.3 percent and Europe contributed 41.7 percent.

In addition to the fact that some of the bill's provisions may be unconstitutional, especially with respect to patents, if this legislation should become law, Minnesotans may not have access to some of the most innovative drugs being produced if the board and a biopharmaceutical company cannot reach agreement on a price. The board sounds uncomfortably close to England's National Institute for Health and Care Excellence ([NICE](#)), which is known for [rationing care](#) and denying access to [new therapies](#).

CCAGW appreciates concerns over drug pricing, but the better way to lower drug costs is for state legislators to contact Minnesota's federal representatives and encourage them to make sure the Food and Drug Administration efficiently increases the speed of its generic drug approvals and creates an environment that encourages more "me too" drugs to foster competition among branded pharmaceuticals that are in the same class and under patent. In addition, Congress and the Biden administration should, through better negotiations on trade deals, get countries that can afford to contribute more to biopharmaceutical research to do so, instead of [free-riding](#) on U.S. investment as was discussed in the Council of Economic Advisers February 2020 report, "Funding the Global Benefits to Biopharmaceutical Innovation."

Again, I respectfully ask you to urge your conferees to strike the entire bill language contained in HF 801 from SF 972, the Omnibus Commerce Policy and Finance bill.

Sincerely,

A handwritten signature in black ink that reads "Thomas Schatz". The signature is written in a cursive style and is enclosed in a thin black rectangular border.