

TESTIMONY OF SCOTT MILLER IN OPPOSITION

Senate Bill 2031 – Prescription Drug Reference Rate

Good Morning, my name is Scott Miller. I am the Executive Director for the North Dakota Public Employees Retirement System, or NDPERS. I appear before you today in opposition to Senate Bill 2031.

As you are all aware, NDPERS administers the State's health insurance plan, including pharmacy benefits. We are acutely aware of the incredible cost of prescription drugs in the United States, and we support efforts and discussion on how to reduce those costs.

However, Senate Bill 2031 will not do that.

What Senate Bill 2031 does is attempt to put a cap on the amount that can be paid for certain drugs. That cap is based on Canadian drug prices. The Insurance Department would need to research those costs and set those prices. The bill then prohibits pharmacies and NDPERS from paying a higher price for those drugs than the Insurance Department sets. If NDPERS or a pharmacy pays more than that price, the bill imposes a class A misdemeanor as punishment. Note that NDPERS does not purchase prescription drugs, so the punishment provisions would be inapplicable to NDPERS. But they would apply to pharmacies.

What Senate Bill 2031 does NOT do is attempt to restrict the price set by drug manufacturers and distributors. The bill instead requires manufacturers to "negotiate in good faith with any payor or seller of prescription drugs" for "a price that is within the referenced rate". There is no requirement that the manufacturer or distributor agree to sell the drug for such a price.

As an example, the drug Ozempic sells in the US for \$1,060, and in Canada for \$142. Since \$1,060 is the going market price for the drug in the US, there is little reason for the manufacturer or distributor to agree to sell the drug for less. The debate on whether insisting on selling that drug for the market price is not “in good faith” would be an interesting one, and I don’t know who would make that argument on the State’s behalf.

In any event, our pharmacies could not buy that drug for more than \$142 without facing criminal penalties.

As a result, this bill will not only fail to affect the price of prescription drugs in North Dakota, but it will have two additional wide-ranging effects:

1. It will essentially remove those drugs from the drugs available to NDPERS Group Health Insurance Plan participants, since pharmacists will probably not be able to obtain those drugs at the set prices; and
2. It will cause many, if not all, of the pharmacies in our network to cease participation in the network, thereby removing all access to prescription drugs for our participants.

There are a number of other notations from Deloitte, our health plan consultant, which I provided to the Employee Benefits Programs Committee:

1. Determining the actuarial impact is difficult based on the information available, the number of assumptions that would need to be made, and the uncertainty of how the bill could be implemented and administered

2. The program would most likely yield lower costs if the legislation can be implemented, operationalized, and complied with by the various stakeholders, which present significant challenges
3. The appropriate methodology used to identify the costliest 25 drugs and their “net price” is complex
4. The methodology for calculating “savings” is also challenging
5. A process for converting drug prices from \$Canadian to \$US will need to be created
6. The Affordable Care Act prohibits the use of a metric used in Canada to set prices
7. The bill may lower prices and potentially future premiums, but may not directly benefit members because of the typical copay/coinsurance and annual maximums
8. The penalty provisions attempt to apply to NDPERS, but NDPERS does not purchase prescription drugs, and so the provisions would be inapplicable
9. However, pharmacies in the state, which would be subject to the penalty provisions, may elect to terminate participation in the NDPERS network because of those penalties
10. Access to the affected drugs may be reduced
11. The reference rate may conflict with federal most favored nation (MFN) requirements, which restrict manufacturers from offering rates lower than what the federal government pays for Medicaid
12. The U.S. Constitution’s Commerce Clause may affect the ability to assess penalties on manufacturers

I think we can all agree that US citizens pay far too much for prescription drugs. However, the solution to that problem has so far eluded even the most impressive economic minds. This bill is not the solution. I ask you to vote “do not pass” on SB 2031.