HDA
Healthcare Distribution Alliance

PATIENTS MOVE US.

March 22, 2021

North Dakota State Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: Healthcare Distribution Alliance (HDA) Opposition to SB 2170

Chairman Lefor, Vice Chair Keiser, and Members of the Industry, Business and Labor Committee,

The Healthcare Distribution Alliance (HDA) offers this letter to indicate our opposition to Senate Bill (SB) 2170, relating to prescription drug costs. HDA is the national trade association representing healthcare wholesale distributors — the vital link between the nation's pharmaceutical and healthcare manufacturers and more than 180,000 pharmacies, hospitals, and other healthcare settings nationwide. On behalf of HDA, I would like to express our opposition to SB 2170 and its failure to accurately reflect the complexity of the pharmaceutical supply chain.

Distributors are unlike any other supply chain participants – their core business **does not involve manufacturing, marketing, prescribing or dispensing medicines, nor do they set the list price of prescription drugs, influence prescribing patterns or determine patient-benefit design.** Their key role is to serve as a conduit for medicines to travel from manufacturer to the provider while making sure the supply chain is fully secure, fully functional, and as efficient as possible. Due to these efficiencies, HDA member companies generate between *$33 and $53 billion in estimated cost savings each year* to our nation's healthcare system.[1]

A wholesale distributor is responsible for fulfilling pharmacy customer orders. **Wholesale distributors have no insight into patient-level data, the price the patient pays, nor are they privy to how products are dispensed at the patient-level by the pharmacy.** At the time of the purchase from the wholesale distributor, a retail pharmacy is unaware of which patient would receive the medication and what coverage that individual would have, the wholesaler would not be able to differentiate when or how to sell the product at the proposed referenced rate upon the sale to the pharmacy. Simply put, a wholesale distributor has no insight into the patient and they have no impact on what that patient pays at the pharmacy counter.

Furthermore, a wholesale distributor would not be in a position to negotiate with the Insurance Commissioner the sale price of a prescription drug or the maximum reimbursement by a third-party payor for a prescription drug. Third-party payors and their pharmacy benefit manager agents set reimbursement for drugs dispensed to the health plan members. Such reimbursement formulas may be based on WAC or other metrics set by manufacturers; wholesale distributors are not privy to these reimbursement formulas. Similarly, a wholesale distributor would not be able to "negotiate in good faith" as they do not negotiate drug pricing with the Insurance Commissioner. These negotiations fall

[1] The Role of Distributors in the US Health Care Industry Report; https://www.hda.org/resources/the-role-of-distributors-in-the-us-health-care-industry

outside of the scope of a wholesale distributor. Likewise, the determination not to sell a product to a state would fall outside of the wholesale distributor's authority, this determination would occur at the direction of the manufacturer who could impose such conditions on the sale of the product to the wholesaler. Wholesale distributors should not be subject to a penalty if they are acting at the direction of the manufacturer.

The Centers for Medicare and Medicaid Services (CMS) recently proposed a similar model, Most Favored Nations (MFN). When CMS conducted their own impact analysis[1] they predicted that a transition to this type of model could disrupt care – the agency projected a nine percent increase in the rate at which patients at non-safety-net providers would have no access to Medicare covered medications in the first year of the demonstration – increasing to 19% in years 3 – 7. This projected loss of access could force beneficiaries to travel to seek care from an excluded provider or perhaps even postpone or forgo treatment altogether.[2] When addressing a similar policy proposal in Congress, HR 3, North Dakota Congressman Kelly stated "Speaker Pelosi's partisan drug bill will lead to fewer cures for patients. It suffocates innovation and development, and it could keep dozens of life-saving prescription drugs from entering the market in the next decade."

While HDA appreciates the importance of containing costs, SB 2170 is an uncontrolled experiment seeking to establish price controls on unspecified pharmaceutical products while inaccurately reflecting the supply chain. Due to these concerns, HDA opposes SB 2170 and we respectfully request an unfavorable vote.

Thank you,

Leah D. Lindahl

Leah Lindahl
Senior Director, State Government Affairs
Healthcare Distribution Alliance

[1] Federal Register, Vol. 85, No. 229, November 27, 2020 page 76237, "Table 11 – Assumptions Reflected in OACT Estimate"

[2] *See*, for e.g., *Id.* at 76237, 76248.