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TESTIMONY SUBMITTED FOR THE RECORD

ON

HB 1032 – PRESCRIPTION DRUG COST TRANSPARENCY

NORTH DAKOTA SENATE COMMITTEE ON HUMAN SERVICES

THOMAS SCHATZ

PRESIDENT

COUNCIL FOR CITIZENS AGAINST GOVERNMENT WASTE

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The Council for Citizens Against Government Waste (CCAGW) is a private, nonpartisan, nonprofit, organization representing more than one million members and supporters nationwide, with 4,461 members in North Dakota. CCAGW's mission is to uncover, publicize, and eliminate waste, fraud, abuse, mismanagement, and inefficiency in the federal government. Founded in 1984 by the late industrialist J. Peter Grace and syndicated columnist Jack Anderson, CCAGW was established to follow up on the work of the President's Private Sector Survey on Cost Control, also known as the Grace Commission. CCAGW appreciates the ability to submit comments on HB 1032.

CCAGW is concerned that HB 1032, which is intended to provide prescription drug cost transparency, is nothing more than a fishing expedition that will fail to lower the costs of drugs in North Dakota. Instead, it will raise costs and burden pharmaceutical manufacturers, insurers, pharmacy benefit managers, hospitals, and pharmacies with busy-work activities, and require the hiring of additional accountants and lawyers to provide accurate information in a limited time frame. This will reduce the amount of money needed for research and development of life-saving drugs like the vaccines for COVID-19, and the additional costs of compliance for the other stakeholders, including the state board of pharmacy, will be passed on to consumers and taxpayers. Furthermore, this bill was reported back from the House Human Services Committee as "do not pass" by a vote of 12 to 2.

Using the wholesale acquisition cost (WAC) of \$70 or more to determine the 40 percent increase after five calendar years or the 10 percent-plus increase trigger within a year for reporting a price hike as required in HB 1032 is a faulty premise because it represents the list price and not what the patient usually pays. The reams of data that will be required to be reported include proprietary information, which if it becomes public would be available to competitors, undermining competition. Having this material published on the website would likely interfere with private negotiations that drive down costs.

The Federal Trade Commission (FTC) has acknowledged that disclosure of pricing information could undermine beneficial market forces within the industry, leading to higher, not lower prices. A July 2, 2015 FTC [policy paper](#) stated, "But transparency is not universally good. When it goes too far, it can actually harm competition and consumers. Some types of information are not particularly useful to consumers but are of great interest to competitors. We are especially concerned when information disclosures allow competitors to figure out what their rivals are charging, which dampens each competitor's incentive to offer a low price or increases the likelihood that they can coordinate on higher prices."

Supporters of a free market understand that the best approach to lowering prices of any product is an environment that fosters competition and innovation, not more regulation and government intervention. It takes 10 to 12 years and an average of [\\$2.6 billion](#) to get a new drug through the Food and Drug Administration (FDA) approval process. According to the FDA, [90 percent](#) of all drugs dispensed are generics.

Rather than pursuing HB 1032, North Dakota legislators should ask their congressional delegation to continue to hold the FDA's feet to the fire to make sure that generic drugs are approved in a timely manner. The FDA must also continue to adopt modern techniques that streamline and speed up clinical trials and approval processes. In addition, all levels of

government should provide an environment that encourages the development of [“me-too”](#) drugs that provide competition for pharmaceuticals that are still under patent and provide more patient choice.

These actions would be a far more effective way to help bring down the price of prescription drugs than passing this legislation. Again, HB 1032 should be opposed.