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Guiding Greater Health

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March 7, 2023

Representative Robin Weisz, Chairman
House Human Services Committee
North Dakota State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

Re: Senate Bill 2140, Insulin Coverage

Dear Chairman Weisz and Committee Members,

I am writing on behalf of AHIP regarding our concerns with Senate Bill 2140. AHIP shares your goals of making insulins and all drugs more affordable for patients we appreciate the Legislature's interest in protecting North Dakotans from the pricing schemes being perpetrated by pharmaceutical manufacturers. However, AHIP opposes legislation that mandates capping the cost-sharing for prescription drugs while allowing drug manufacturers to continue to raise prices year- over-year with no accountability.

AHIP and our member health insurance providers believe every American should have comprehensive coverage that helps them prevent, diagnose, and manage both acute and chronic health conditions, including diabetes. Health insurance providers work every day to promote health, wellness, and prevention; address the significant drivers of chronic disease and poor health; give consumers the power to choose the care and coverage that works best for them; improve patient care; and enhance the consumer experience with innovative tools, treatments, and technologies.

For some diabetes patients (especially those who are uninsured), the rising cost of insulin products has created an affordability crisis that threatens their health and well-being. Out-of-control prices for insulin products—and other prescription drugs—are a direct consequence of drug manufacturers' taking advantage of a broken market for their own financial gain at the expense of patients. The current lack of competition, transparency, and accountability in the prescription drug market has created extended, price-dictating monopolies with economic power that exists nowhere else in the U.S. economy.

While mandating broad coverage of insulin supplies and capping the cost-sharing (copays, coinsurance, deductibles, referred to as "copay caps") for insulin products seems like a consumer-friendly approach to hold costs down for patients with diabetes, these policies can have dangerous consequences that drug manufacturers fail to disclose with policymakers. We have concerns with SB 2140 for the following reasons:

- This approach does not address the underlying price of prescription drugs and allows drug makers to skirt accountability, oversight, and transparency in pricing. In fact, this approach will likely allow the underlying prices to increase with even less transparency – increasing costs for all consumers.
- There are better public policy solutions to address prescription drug affordability.

SB 2140 does nothing to address the underlying price of insulin.

Since 2006, while the number and supply of insulin products has grown, the list price of insulin products has increased exponentially. Between 2002 and 2013, the list price of insulin nearly tripled with regular price increases each year from the three main companies that manufacture insulin and the annual costs per patient for insulin nearly doubled from 2012 to 2016.[1] Notably, these increases are not attributed to any advances in the drug itself. Insulin has been an effective and available therapy for individuals with diabetes for almost a century.

Capping the cost of insulin allows drug manufacturers to hide the real prices of their drugs from consumers while raising costs for everyone. A recent multi-year bipartisan investigation by the U.S. Senate Finance Committee on rising insulin costs found that skyrocketing prices are due to a lack of transparency and misaligned incentives among insulin manufacturers where three drug companies were raising and keeping insulin prices high through "shadow pricing".[2]

> *"The investigation found that insulin manufacturers aggressively raised the list price of their insulin products absent significant advances in the efficacy of the drugs. In particular, the investigation found that Novo Nordisk and Sanofi not only closely monitored the others' price increases, but they also actually increased prices in lockstep – sometimes within hours or days of each other—a practice known as "shadow pricing." These efforts kept a high price floor for their products, and left consumers paying more for insulin at the pharmacy counter."*[3]

The U.S. House of Representatives Committee on Oversight and Reform also found that insulin manufacturers have manipulated the market to keep prices high and competition low.

> *The three insulin companies have engaged in strategies to maintain monopoly pricing and defend against competition from biosimilars. These strategies include manipulating the patent system and the marketing exclusivities granted by the Food and Drug Administration (FDA), pursuing tactics to switch patients to new formulations of their*

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[1] https://insurance.illinois.gov/Reports/Docs/Insulin-Pricing-Report-November-2020.pdf

[2] https://www.finance.senate.gov/chairmans-news/grassley-wyden-release-insulin-investigation-uncovering-business-practices-between-drug-companies-and-pbms-that-keep-prices-high

[3] Ibid.

products before losing exclusivity, and engaging in shadow pricing (confirming U.S Senate Finance Committee findings detailed above) which keeps prices high.[4]

Copay caps hide the true price of prescription drugs and instead spread the cost to other services and consumers.

Health insurance providers must adhere to several federal and state laws to ensure consumers have access to affordable and quality health care coverage. Health insurance regulations act as both front end protections (rate review) and back-end protections (medical loss ratio requirements). Increases in health insurance costs must be justified to regulators and consumers must be compensated if premium rates were set too high.

Drug manufacturers are not accountable to regulators in this way and, as a result, regularly increase their list prices without providing any explanation to consumers. Without any sort of public pressure or accountability at the pharmacy counter, drug makers will be allowed – and even encouraged – to increase their already high prices. Copay caps provide pharmaceutical manufacturers a blank check to charge whatever they want because consumers are shielded from uncontrolled price increases.

Federal law dictates the actuarial value (AV) requirements for the individual and small group markets. Under federal law, a set percentage of medical expenses must be covered by the enrollee. Any time a copay is reduced for one service, it must be increased for another type of service to maintain the AV for that plan. Thus, if an insurer covers more of the overall cost of prescription drugs (by lowering the consumers' cost share), the plan must cover less of the costs for other benefits included in the health plan in order to comply with the AV requirements. Copay caps limit health insurance providers ability to mitigate pharmaceutical price increases while adhering to state and federal laws and regulations. Simply put, enrollees will pay more for doctor visits and other benefits to offset lower prescription drug copays.

There are better solutions to address prescription drug affordability.

Placing arbitrary caps on consumer cost sharing is not the right way to achieve lower drug prices. AHIP members support market-based solutions that hold drug makers accountable for high list

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4 https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf

prices and put downward pressure on prescription drug prices through competition, consumer choice, and open and honest drug pricing.

- **Improving Drug Pricing Transparency:** Understanding drug prices is critical to affordable health care coverage. Rather than enacting copay caps which allow drug manufacturers to hide their price. States should focus on passing transparency laws that provide insight into manufacturers' pricing practices to better understand what causes high launch prices and increases on existing prescription drugs. Copay caps cannot be allowed to distract from addressing the root causes of increased costs for prescription drugs to consumers.
- **Banning Pay for Delay:** States should follow California's lead and pass legislation banning pay for delay agreements, where drug manufacturers pay or incentivize a competing company to keep cheaper generic drugs off the market.[5] The pharmaceutical market is notorious for patent abuses, which harm consumers by giving higher-priced brand name drugs longer periods of exclusivity. As the U.S. House of Representatives Committee on Oversight and Reform's report showed, this is particularly true in the insulin market. State policymakers can also support efforts at the national level to prohibit these types of abuse practices.
- **Value and Competition:** Nine states currently have CMS approval to enter into outcomes/value-based purchasing agreements for drugs purchased through the Medicaid program. In late December 2020, CMS issued a final rule that makes it easier for state Medicaid programs, commercial insurers, and pharmaceutical companies to enter into these types of agreements. AHIP believes that increasing the number of value-based arrangements for states and commercial insurers will lead to lower costs and better outcomes.
- **Partnerships:** By working together under innovative arrangements, pharmaceutical companies and health insurance providers can lower the costs of prescription drugs for consumers. In 2020, the Centers for Medicare and Medicaid Services (CMS) launched a voluntary Medicare initiative, the "Part D Senior Savings Model" that encourages collaboration between pharmaceutical companies and health plans to lower costs for insulin and ensure those cost savings pass through to consumers. In this initiative, CMS recognized that lower prescription drug costs for seniors were possible if pharmaceutical companies reduced the cost of insulin by increasing their discounts. Health plans then use those savings to reduce the out-of-pocket costs for seniors at the point of sale. This balanced solution avoids the cost-shifting consequences of cap-the-copay legislation.

Health insurance providers are strongly committed to ensuring that patients have access to affordable prescription drugs, including insulin. Although capping copayments for prescription drugs may appear to bring temporary relief for some, they will lead to added costs for all patients in the form of higher premiums and higher copays for other health care services, while allowing

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[5] *California SB 814* (2019).

drug manufacturers to continue to raise prices year-over-year with no accountability.

We appreciate the opportunity to share our concerns and your consideration of our comments. Please do not hesitate to contact me at ktebbutt@ahip.org should you have any questions.

Sincerely,

Karlee Tebbutt
Regional Director, State Affairs
AHIP – Guiding Great Health

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.