STATEMENT

PhRMA
RESEARCH • PROGRESS • HOPE

Minnesota House File 3144
Insulin Tax to Create the Emergency Insulin Fund/Patient Assistance Program
February 13, 2020

Position: As written, the Pharmaceutical Research and Manufacturers of America (PhRMA) opposes House File 3144 (HF 3144), which raises constitutional and privacy concerns, disregards existing company and patient assistance programs, assesses a tax on insulin manufacturers to create an emergency insulin patient assistance program, ignores the fact that insurers determine the price a consumer pays, and fails to consider that many health plans have already implemented a copay cap for insulin.

PhRMA represents the country's leading innovative biopharmaceutical research and biotechnology companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than $900 billion in the search for new treatments and cures, including an estimated $79.6 billion in 2018 alone. Today, rapid acting insulin, including an inhalable insulin, is offering patients dosing directly before and even after meals, rather than in anticipation of meals. For pediatric patients, inhalable insulin and insulin pens offer greater convenience, without subjecting patients to multiple needle sticks while improving adherence and reducing complications. Long acting insulin now provides 24-hour coverage and greater flexibility in dosing, reducing the risk of dangerous blood sugar drops. With more than 170 medicines in the pipeline to treat Type I and Type II diabetes, there is more hope than ever for future innovative treatments for patients.

The Insulin Patient Assistance Program and Emergency Insulin Assistance Program raise constitutional concerns and violate the Fifth Amendment's Takings Clause.

HF 3144 requires manufacturers to provide, "at no charge," up to a six-month supply of insulin to qualifying individuals and requires manufacturers to cover the cost of up to a three-month emergency supply of insulin. Manufacturers will not be provided with reimbursement for these costs, which results in a taking of their insulin without just compensation (i.e., the market value of the insulin provided) in violation of the Takings Clause, among other constitutional concerns. Participation in the programs is "a condition of doing business in" Minnesota, but the U.S. Supreme Court recently held in *Horne v. Department of Agriculture* that the government may not take property as a condition of allowing businesses to sell their products.

The confusing and complex design of the insulin tax in HF 3144 raises privacy concerns.

The insulin tax proposal requires multiple entities to report prescription insulin sales in a manner that will likely result in different totals of a single drug reported by multiple entities. To contest a tax assessment, a drug manufacturer would need access to data provided by pharmacies and wholesale

distributors to determine the assessment at the patient level to contest the Board of Pharmacy's assessed insulin tax. Access to patient level data may violate both federal and state laws protecting patient medical information and raises ethical concerns on the appropriateness of sharing protected patient data for the purpose of administering a tax.

HF 3144 taxes insulin prescription manufacturers to fund a patient assistance programs and ignores the fact that all insulin manufacturers currently have patient assistance programs.

All three of our member companies that manufacture insulin offer patient assistance programs, and patients can access information on those and other programs through PhRMA's Medication Assistance Tool (www.mat.org), a search engine that combines information on over 900 public and private programs that provide free or nearly free medicines to eligible patients. This resource also links patients, caregivers and providers to member company websites where information about the cost of the medicine is available. In addition, member companies offer coupons that can greatly help lower the patient's out of pocket costs.

HF 3144 disregards these resources that improve patient access to medicines and instead, taxes insulin prescription medicines to fund an emergency insulin patient assistance program. This legislation unnecessarily diverts existing resources devoted to furthering innovation to a state program that lacks comprehensive detail and fails to help the diabetic patient in the way intended.

HF 3144 strives to address drug affordability but provides the wrong solution by assessing a tax on insulin medicines.

Health insurers determine the price that their enrollees pay for a prescription medicine, as well as utilization management tools that will be employed. In response to the Omnibus amendment language in the 2019 Minnesota budget, insurers are prevented from charging patients more than the net price for medications negotiated by the insurer. In response, as reported in The Star Tribune[1], many health plans have made changes to the structure of their copay design. For example, some of the plans have adjusted and lowered their copays to as little as $0/ month or $25/ month in some cases. These plan copay adjustments, along with patient assistance programs, alleviate the cost burden on patients and provide additional resources that eliminates the need for a state emergency fund and patient assistance program.

Drug spend and prices for insulin, on a net basis, are growing slower than inflation.

According to IQVIA, net prices for all medicines grew just 0.3 percent in 2018, less than the rate of inflation. Drug spend is also growing slower than the rate of inflation according to IQVIA. In fact, according to SSR Health[3], after discounts and rebates, net prices for the most commonly used insulin classes are declining because manufacturers give substantial rebates and discounts to pharmacy benefit managers (PBMs) and insurers that significantly lower the net price of medicines. Unfortunately, it doesn't always feel that way for patients because insurers don't always share these savings with patients at the pharmacy counter in the same way they share negotiated discounts for physician or hospital services for their plan members. Despite these significant manufacturer discounts, patients' out-of-pocket costs continue to go up. Insulin is one of many examples of medicines where health insurers are not always sharing the rebates and discounts they receive with patients. Market analysts report prices for

1. http://www.startribune.com/blue-cross-minnesota-to-eliminate-insulin-co-pays-for-fully-insured-members/557915692/
2. SSR Health. "US Rx net prices fall 4.8 percent y/y in 4Q18." March 18, 2019
3. SSR Health. "US Brand Net Pricing Growth 0.2% in 3Q17," December 2017. Eli Lilly, Press Release, March 2019.

insulin after discounts and rebates stayed flat or declined in recent years. According to these analysts, discounts can lower the net price of insulin by 70% or more; net prices of long acting insulin have decreased 30% after discounts and rebates; and net prices for long acting insulins are less expensive now than in 2010.[2,3] This means that all or almost all of insulin list price increases are being returned to payers and supply chain entities[4].

The US Department of Health & Human Services, Med PAC, and others have recognized that there are misaligned incentives in the current system that may result in insurers and pharmacy benefit managers (PBMs) favoring medicines with high list prices in order to profit off of drug manufacturer rebates. In 2018, biopharmaceutical companies paid more than $166B in negotiated rebates and discounts. In Minnesota, biopharmaceutical companies paid approximately $543M in rebates to the federal and state government, with $272M going to the state of Minnesota. PhRMA supports state policies that ensure patients receive and benefit from drug manufacturer rebates, and we would welcome the opportunity to discuss these policy solutions with Minnesota legislators.

Instead, the state should focus on proposals such as better diabetes management for Minnesotans, which could save the state more money and improve health outcomes in the long run.

If patients took medicine as prescribed, the American Diabetes Association estimates that there would be 1 million fewer emergency room visits and hospitalizations annually. In addition, the U.S. could save $8.3 billion each year. For the state of Minnesota, there could be $20M in projected total annual savings to Minnesota Medicaid from better management of diabetes, according to the IHS study. More than three in ten Medicaid patients have uncontrolled diabetes, meaning they have difficulty keeping their blood glucose under control. In Minnesota, better control of diabetes can reduce the onset of ischemic heart disease by up to 20 percent. The study projects that Minnesota Medicaid could save an average of $409 per beneficiary due to reduced incidence of heart attack, stroke and cardiovascular disease.

Revenue raised by the taxes will ultimately be absorbed by administering the reporting and administration requirements of the taxes.

While the proposal does not include sufficient detail of the cost or process of the administration of the tax itself, it assumes that revenue from the tax would first be diverted toward the cost of administering the tax itself. As discussed above, due to concerns about erroneous collections, there could be significant administrative cost offsets associated with this tax. It stands to reason that the higher the risk of erroneous collection, the higher the number of challenges to such collections, and the higher the costs associated with administering the tax collection and review system. This in turn suggests that revenue collected from the tax may ultimately end up being cannibalized; the tax will be used to pay for the very system required to administer the tax – and to identify all the erroneous collections that will likely ensue and repay erroneously collected taxes with the addition of interest.

For these reasons, PhRMA urges Minnesota legislators to oppose HF 3144.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research and biotechnology companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. In Minnesota, the biopharmaceutical industry employs over 7,500 individuals and the industry generates a total economic impact of $10.5 billion per year. Additionally, the biopharmaceutical industry contributed approximately $543 million in prescription drug rebates to the Minnesota Medicaid programs in 2017.

1. http://www.startribune.com/blue-cross-minnesota-to-eliminate-insulin-co-pays-for-fully-insured-members/557915692/
2. SSR Health. "US Rx net prices fall 4.8 percent y/y in 4Q18." March 18, 2019
3. SSR Health. "US Brand Net Pricing Growth 0.2% in 3Q17," December 2017. Eli Lilly, Press Release, March 2019.