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Office of the Governor

June 5, 2023

The Honorable Steve Yeager
Speaker of the Nevada State Assembly
Nevada Legislature
401 South Carson Street
Carson City, Nevada 89701

Re: Assembly Bill 250 of the 82nd Legislative Session

Dear Speaker Yeager:

I am forwarding to you, for filing within the time limit set forth in the Nevada Constitution and without my approval, Assembly Bill 250 ("AB 250"), which is titled as follows:

AN ACT relating to health care; prohibiting certain actions related to pricing and reimbursement for certain drugs; creating a cause of action for violating such prohibitions; and providing other matters properly relating thereto.

AB 250 inappropriately relies on Medicare's Maximum Fair Price ("MFP") - a concept created in the federal Inflation Reduction Act ("IRA") and signed into law a mere eight months ago. AB 250 prohibits purchases or reimbursements above the MFP. That said, MFPs are not reference prices or objective external benchmarks; rather, they are prices that manufacturers are compelled to make available with respect to Medicare beneficiaries because failure to do so will result in an excise tax, really a penalty, of an amount up to 1900% of daily sales and, potentially, an exclusion from doing business with Medicare and Medicaid in the future.

State reliance on the MFP would upend the balance that Congress struck when it carefully determined the scope and breadth of transactions subject to an MFP. The more states and commercial entities treat the MFP as a benchmark, the less likely certain manufacturers may be to participate in federal healthcare programs or to continue seriously investing in marketing to Nevadans in need of care. This is undoubtedly why Congress explicitly restricted the obligation to provide access to the MFP to units furnished or dispensed to Medicare beneficiaries.

Critically, AB 250 would set arbitrary price caps in Nevada based on federal decisions with no review or consideration from state stakeholders. These caps could restrict patients' access to medicines and result in less innovative treatments for patients.

Patient access to medication and treatment is critical, but even more important is research and development into medical innovation. Though price-setting policies are often aimed at the admirable goal of increasing access to care, the unintended consequence of many, if not most, related pricing regulations has been a decrease in innovation as bureaucratic entities tend to focus their investments into on the policies or diseases they determine to be the most worthy of support – not on patient-outcomes.

Moreover, AB 250 ignores existing and potentially ongoing issues with the prescription drug supply chain. Many pharmacies and hospitals purchase medicines through national or regional buying groups, or national contracts based on national pricing indexes. Though those transactions would be subject to the price limits in this bill, in-state providers would still only be able to charge patients for the maximum in-state price. Effectively, this means providers would be forced to charge less than they actually pay for those products – an untenable result which would require providers to choose whether to continue providing certain medications or to discontinue purchasing those medications altogether. These circumstances would detrimentally impact both our patients and providers.

Since AB 250 would ultimately lead to higher costs and less accessibility to certain forms of care, I cannot support it.

For these reasons, I veto this bill and return it without my signature or approval.

Respectfully submitted,



JOE LOMBARDO
Governor of Nevada

Enclosure

cc: The Honorable Stavros Anthony, President of the Senate (without enclosure)
The Honorable Nicole Cannizzaro, Senate Majority Leader (without enclosure)
The Honorable Francisco Aguilar, Secretary of State (without enclosure)
Brendan Bucy, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel Bureau, Director (without enclosure)
Bryan Fernley, Esq., Legislative Counsel (without enclosure)