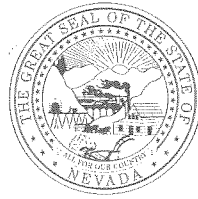


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Office of the Governor

June 2, 2017

The Honorable Aaron Ford
Nevada State Senate Majority Leader
The Nevada Legislature
401 South Carson Street
Carson City, NV 89701

RE: Senate Bill 265 of the 79th Legislative Session

Dear Leader Ford:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Senate Bill 265 ("SB 265"), which is entitled:

AN ACT relating to prescription drugs; requiring the Department of Health and Human Services to compile a list of prescription drugs essential for treating diabetes in this State; requiring the manufacturer of a prescription drug included on the list to report certain information to the Department; requiring a manufacturer to notify the Department in advance of planned price increases for such drugs; requiring a manufacturer of prescription drugs to submit a list of each pharmaceutical sales representative who markets prescription drugs to certain persons in this State; prohibiting a pharmaceutical sales representative who is not included on such a list from marketing prescription drugs on behalf of a manufacturer; requiring each pharmaceutical sales representative included on such a list to report certain information to the Department; requiring certain nonprofit organizations to report to the Department certain information concerning contributions received from drug manufacturers, insurers and pharmacy benefit managers or trade and advocacy groups for such entities; requiring the Department to place certain information on its Internet website; authorizing the Department to impose an administrative penalty in certain circumstances; requiring a private school to allow a pupil to keep and self-administer certain drugs; requiring certain insurers to provide

certain notice to insureds; providing a penalty; and providing other matters properly relating thereto.

SB 265 contains provisions that are well-intentioned relating to legitimate concerns regarding access to affordable health care. Health care costs for patients with chronic diseases, particularly diabetes, are escalating, and in many cases prohibitively so. Rising costs mean that fewer Nevadans have access to critical—even lifesaving—health care options, threatening to diminish the quality of life for families across our State. To be clear, I support efforts to slow these rising costs, and share the belief that greater transparency in the marketplace can be a contributing factor to more affordable care options and can support other public policy goals.

While certain aspects of this bill are laudable, including provisions benefiting students suffering from diabetes, SB 265 also poses serious risks of unintended and potentially detrimental consequences for Nevada’s consumer patients, not the least of which is the possibility that access to critical care will become more expensive, more restricted, and less equitable. SB 265 fails to account for market dynamics that are inextricably linked to health care delivery and access to prescription drugs. This failure cannot be overlooked, and it could cause more harm than good for Nevada’s families.

For example, SB 265 requires a manufacturer of certain prescription drugs, such as insulin, to provide a public, 90-day notice of any potential increase in the price of diabetes drugs. By requiring an advance notice of a change in price before the change is effective, this bill may create a perverse incentive for some market participants to manipulate supply in order to maximize profits. SB 265 would inevitably provide purchasers, wholesalers, and secondary distributors of health care products an even greater financial motivation to restrict access to health care products. This could potentially lead to stockpiling of drugs or other artificial mechanisms for adjusting the supply of medication based on the guarantee of higher profits in the future. In short, SB 265 risks creating a “buy-low, sell-high” culture with regard to diabetes medication, which will only serve to exacerbate access-to-care challenges in Nevada.

The price-increase notice requirements in SB 265 will also spur the growth of the so-called “gray market” in health care products. In that gray market, the choice to sell critical shortage drugs to the highest bidder will be all the more attractive, particularly when states with less stringent rules and regulations are involved. This scenario could leave more Nevadans with higher costs, fewer choices, and less access to the medicine they need. For these reasons, SB 265 threatens to create undesirable incentives that could result in drug stockpiling, artificially inflated drug prices, and an expanded gray market for prescription drugs, thereby perpetuating the very problems SB 265 was meant to solve.

Moreover, SB 265 wholly ignores the role of pharmacy benefit managers (PBMs) and other participants along the prescription drug supply chain. SB 265 focuses exclusively on increasing transparency at the first stage of a complex process and not the others. By excluding other relevant participants from its requirements to publish pricing information, the bill provides an incomplete pricing picture for patient consumers. Complete transparency would shed light on every stage of the prescription drug supply process, and require all participants to share the

same disclosure responsibility. The selective and narrow approach reflected in this bill is unlikely to achieve sound public policy solutions for patients in Nevada.

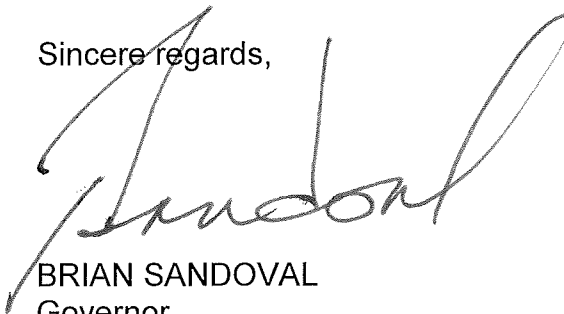
In addition, constitutional and other legal concerns have been raised that render the bill problematic. Among other issues, SB 265 could be challenged under theories of federal preemption, the Fifth Amendment's prohibition on uncompensated takings, and the Dormant Commerce Clause. And while the ultimate disposition of any legal claim challenging SB 265 would be for the courts to decide, lengthy and expensive litigation and legal uncertainty could destabilize the market for diabetes drugs and jeopardize a now secure supply of these drugs.

Finally, there is insufficient evidence that SB 265 will in fact lead to lower drug costs. While other states are considering policies similar to those reflected in this bill, the results to date are inconclusive. Before I support a bill as uncertain as SB 265, which deals so directly and extensively with the health and well-being of countless Nevadans, there must be compelling evidence that the benefits are worth the risks. No convincing evidence has been offered to justify SB 265's nascent, unproven, and disruptive change to public health policy.

Having reviewed the legislative record, testimony from committee hearings, and hundreds of constituent calls and letters, it is clear that there are others with deep concerns regarding this bill. In addition, many groups have opposed SB 265, including the Epilepsy Foundation, the Nevada Cancer Research Foundation, the Biotechnology Innovation Organization, and the Neuropathy Action Foundation.

For these reasons, I veto SB 265 and return it without my signature or approval.

Sincere regards,



BRIAN SANDOVAL
Governor

Enclosure

cc: *The Honorable Mark Hutchison, President of the Senate (without enclosure)*
The Honorable Jason Frierson, Speaker of the Nevada Assembly (without enclosure)
The Honorable Barbara Cegavske, Nevada Secretary of State (without enclosure)
Claire J. Clift, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)