

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Resolution Opposing the Inclusion of a Pharmaceuticals Chapter in the Trans-Pacific Partnership

Sponsored by Reps. Bob Damron and Kathleen Keenan

Whereas: State Medicaid programs provide medicines for over 40 million low income Americans. Other state programs directly purchase medicines for hospitals and clinics. To afford these programs, states rely on negotiating strategies that compare therapeutically equivalent drugs and construct Preferred Drug Lists to steer patients towards cost effective treatments;

Whereas: The US-Australia FTA and the proposed US-Korea FTA include provisions regulating the operation of government pharmaceutical reimbursement programs in ways that, if applied to Medicaid and other state programs, would significantly hamper the ability of states to control medicine costs;

Whereas: Trade Agreements are reciprocal by nature, and state government policies that violate the terms may lead to foreign government retaliation. The U.S. Government may preempt state law by suing to force states to amend their statutes or practices that invite challenge by trading partners;

Whereas: The U.S. Trade Representative has attacked evidence-based drug pricing strategies through other means, for instance, through bilateral consultations and unilateral blacklisting in its annual Special 301 Report;

Whereas: The U.S. Trade Representative has announced support for a new international trade agenda to “discipline” programs in developed countries that restrain pharmaceutical prices;

Whereas: State government officials have repeatedly warned federal trade officials against policies that favor drug companies over government entities that purchase medicines. [See www.url.com for sixteen communiqués (resolutions, letters, testimony, and submissions to trade panels)];

Whereas: Governors Baldacci (ME) and Douglas (VT) have recently written Department of Health and Human Services Secretary Sebelius to warn against US trade policies that attack evidence based drug pricing;

Whereas: The office of the U.S. Trade Representative is currently negotiating the Trans-Pacific Partnership (TPP), a plurilateral trade agreement among eight nations. To date, no negotiating text has been tabled, but the branded drug lobby has requested the inclusion of a pharmaceutical chapter based on the provisions found in our trade agreements with Australia and Korea.

Be it therefore resolved that NCOIL urges the U.S. Trade Representative to omit any pharmaceutical provisions from the Trans-Pacific Partnership or any future or pending FTA:

- Based on Annex 2(c) of the Australia-US FTA or Chapter 5 of the Korea-U.S. FTA, or
- Otherwise excluding price as a consideration in purchase of pharmaceutical goods, or

- Otherwise seeking to preempt federal, state or local laws or regulations concerning the negotiation of pharmaceutical prices.

Be it further resolved that NCOIL urges trade officials to cease pressuring trading partners to change their mechanisms of drug price negotiations through bilateral pressures or unilateral blacklisting in the Special 301 Report.

Be it further resolved that NCOIL urges trade officials to publicly release text of the TPP and other free trade agreements on an ongoing basis after each negotiation round so that state officials and other public interest representatives can meaningfully review and comment proposed text as in any fair and open legislative process that affects broad public interests;

Be it further resolved that a copy of this resolution be sent to the President of the United States, the U.S. Trade Representative, the Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of State, the U.S. Senate Committee on Finance, and the U.S. House Committee on Ways and Means and the leadership of the House and Senate.