May 10, 2018

An Open Letter to Fiscal Conservatives in the Senate Regarding SF 730

Dear Senator:

On behalf of National Taxpayers Union (NTU) and our members in Minnesota, I write on an urgent matter now before you: Senate File 730. Several of you have been made aware of NTU's comments as this legislation has moved through committees during the legislative process, but all members of the Senate are now confronted with a decision on passage of the bill. As we have noted before, while the human tragedy of the opioid crisis must remain paramount in the minds of policymakers contemplating government's next steps, we hope that you will also give consideration to the fiscal policy aspects of SF 730. Such aspects have important implications that will extend well beyond the current public-health aims of the legislation, and would counsel caution.

SF 730 proposes a unit-based tax on certain classes of legal opioids sold in the state, along with an annual opiate registration tax and a manufacturer's license surtax. While these levies would be collected from manufacturers, and are described as fees or surcharges, they function like taxes – and inevitably their incidence would, like taxes, have consequences well beyond the producers of the medications.

For one, the overhead triggered by the new taxes could be passed along to customers, many of whom are moderate-income patients suffering from legitimate ailments rather than attempting to feed their addictions. Although the latest version of SF 730 attempts to make new distinctions for patients in genuine need, the taxes could still tend to impact this group indiscriminately. It is therefore hardly a stretch for taxpayers to be concerned over what type of policy precedent this legislation could establish, or accelerate. Regulating a product to prevent unintended, illicit uses is one thing; taxing that product, even when used for legitimate health outcomes, is quite another.

Alternatively, the tax-induced overhead could be offset by reduced private-sector expenditures on life-saving drug innovations or even on reformulated opioids that are less susceptible to abuse. Such an expenditure shift could become especially acute if the tax is replicated in other states, potentially creating new problems for taxpayers concerned about rising government health program costs. This is because innovator drugs have yielded proven government *savings*. In general, even high-priced pharmaceuticals tend to be a better long-run bargain because they replace hospital stays, surgeries, recovery therapies, and other costly activities. A National Bureau of Economic Research study put a fine point on this equation, concluding that every dollar spent on prescription drugs leads to a $2.06 reduction in overall Medicare expenditures. Although the Medicaid population has different demographic characteristics than Medicare's, the overall fiscal dynamic is similar.

Furthermore, Medicaid would face more immediate difficulties under SF 730. By our reading of the legislative language, the new taxes would be charged against medications for which the state's Medicaid program makes reimbursements.. In fact, Medicaid is one of the fasted growing portions of its budget, having grown from 14 percent of the general fund in FY09 to 22 percent in FY15. Subsequent funding to cover great costs from higher taxes would make Minnesota's Medicaid (and MinnesotaCare's) finances more difficult for taxpayers to bear. Moreover, it has been suggested that the federal government could reduce its Medicaid contribution to the state by the amount of revenue collected under SF 730. Should it occur, such a cost shift would be a poor substitute for the genuine savings that taxpayers at all levels could experience through more substantive, structural reforms to Medicaid itself.

The effect could be compounded by the fact that eventually, a portion of funds that belong to the "Opiate Stewardship Account" could, at the discretion of the Legislature, be appropriated elsewhere. Doing so could create new programs with liabilities – and constituencies – whose fiscal demands might outstrip revenues collected by the three taxes, thereby requiring new levies. From motor fuels taxes earmarked for road-building, to tobacco settlement monies earmarked for health care, to property tax increases earmarked for education, special-purpose levies have all too often been diverted far from their original purpose.

We would also note that while some of the proceeds from the taxes would help to fund various government oversight and administrative costs, producers who pay the taxes must bear a considerable burden of compliance and reporting costs on their own. As you have no doubt experienced all too often with other tax policies, the burdens of any tax extend far beyond the amount charged – their collection, enforcement, and compliance costs weigh heavily upon both the public and private sector (especially in the case of the new programs created under SF 730). These already considerable amounts could be compounded by administrative uncertainties inherent in the legislation's design, such as the potential for cascading tax overpayments and the challenge of fashioning an appropriate refund mechanism.

NTU takes no position on the non-fiscal provisions in SF 730. Rather, we hope that lawmakers will carefully consider the long-term implications of the funding mechanisms contained in this proposal for taxpayers, patients, and the economic and business climate in Minnesota. Alternatives exist to the tax-based approach in this bill, including more effective utilization of producer rebates paid into Medicaid, additional "best practices" training for prescribers, and expanded partnerships with community-based charities.

Thank you for your thoughtful deliberation of this difficult issue, and should you require any additional information or perspectives, NTU is at your service.

Sincerely,

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