

Office of General Counsel
Walter J. Harvey, General Counsel

SUBJECT: NATIONAL INSULIN PRICE MANIPULATION, FIXING, AND COLLUSION LITIGATION AGAINST INSULIN MANUFACTURERS AND PHARMACY BENEFIT MANAGERS

LINK TO STRATEGIC PLAN: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Approximately ten percent (10%) of the adult population in Miami-Dade County have been or will eventually be diagnosed with diabetes. The serious complications of diabetes include heart disease, stroke, amputation, end-stage kidney disease, blindness, and tragically death. Despite the prominence of the disease and the long-understood treatment with insulin, the costs associated with diabetes treatment in the United States are exceedingly high. A 2022 Yale University study found that 14% of insulin users, approximately 1.2 million people, in the United States face “catastrophic” levels of spending on insulin, meaning they spent at least 40% of their post-subsistence income on Insulin.

Unfortunately, while insulin dependency is a national concern, insulin prices have skyrocketed over the past twenty (20) years, despite the drug being over 100 years old and despite a continued decrease in manufacturing costs and minimal innovations on the drug since its initial formulation. Since 2003, the list price of certain insulins has increased by more than 1000%. While the cost of consumer goods and services has almost doubled, the cost of some diabetes medications has risen more than tenfold. These price increases are not due to the normal rising cost of goods, production costs, investment in research and development, or competitive market forces. Rather, insulin manufacturers who control approximately ninety-nine percent (99%) of the market have increased their prices through insulin price manipulation, fixing, and collusion. Insulin manufacturers and pharmacy benefit managers (PBMs) have artificially inflated the price of insulin at the expense of self-funded health plans and their members and beneficiaries. The resulting pricing scheme has caused patients and payors to incur billions of dollars in additional expense for insulin. Despite recent price concessions by some manufacturers, and provisions in the Inflation Reduction Act, the United States still pays almost three times as much for insulin as the rest of the world.

The School Board of Miami-Dade County oversees the largest school district in Florida, and the third largest in the U.S., employing more than 34,400 employees. With its self-funded health plan, the School Board of Miami-Dade County has been materially harmed by the actions of the insulin manufacturers and PBM counterparts.

Consequently, a wave of litigation and investigations has exposed these unfair business practices with several state Attorneys General and large local governments filing suit over the last year. Several states Attorneys General moved for the creation of a Multi-District litigation (MDL), for the insulin price fixing, which has been assigned to the Honorable Judge Brian R. Martinotti of the United States District Court in New Jersey. In this MDL, the law firm of Morgan & Morgan was appointed to the Plaintiffs Steering Committee.

Accordingly, the General Counsel is presenting this item for the Board's consideration. After much research and multiple discussions with national and local counsel involved in the litigation, it is the General Counsel's recommendation that the Board file a lawsuit in federal court seeking compensation for the financial impact on this District due to the harmful and illegal practices of insulin manufacturers and PBMs

This item requests that the Board authorize the retention of legal counsel and the filing of any claims on behalf of the Board in a MDL against insulin manufacturers and pharmacy benefits managers for insulin price manipulation, fixing, and collusion. A group of Florida-based law firms, which includes the firms of the Morgan & Morgan Complex Litigation Group; Kopelowitz Ostrow Ferguson Weiselberg Gilbert; and Haliczzer Pettis & Schwamm P.A., are proposed to be contracted to head the litigation. The contract for these legal services, which will be a contingency fee agreement, will stipulate that the Board will not be subject to any legal fees or litigation costs unless it recovers monetary compensation for its damages. Costs and expenses associated with this litigation will be paid by the law firms and reimbursed only if there is any recovery. The total contingency fee will be 25% of the recovery.

RECOMMENDED: That the School Board of Miami-Dade County, Florida, authorize the General Counsel to retain outside legal counsel including, but not limited to, the litigation group of Morgan & Morgan Complex Litigation Group; Kopelowitz Ostrow Ferguson Weiselberg Gilbert; and, Haliczzer Pettis & Schwamm, P.A. to represent and file claim(s) on behalf of the Board in a multi-district litigation against insulin manufacturers and pharmacy benefits managers for insulin price manipulation, fixing, and collusion and to execute any necessary contracts to effectuate such legal representation in the manner described in this item.