May 16, 2023

The Honorable Brett Guthrie
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo
U.S. House of Representatives
Washington, DC 20515

Dear Chair Guthrie and Ranking Member Eshoo,

The HR Policy Association and the American Health Policy Institute thank you for your effort to advance legislation to improve hospital price and ownership transparency, and to increase transparency in the pharmacy supply-chain. While we support some of the bills being considered, we oppose other bills, and believe some bills should be significantly improved before being considered by the subcommittee.

For example, the Association supports the Transparent PRICE Act (H.R. 3281), but is seriously concerned the PBM Accountability Act (H.R. 2679) is included in the manager's amendment because it does not provide the transparency that employers and researchers actually need to reduce drug costs. Moreover, the Association opposes the Fairness for Patient Medications Act (H.R. 3285) because it will substantially increase the cost of employer health benefits. We look forward to working with you to strengthen the legislation and craft additional measures to increase transparency, competition, and accountability in the health care industry.

The HR Policy Association is the leading organization representing the chief human resource officers of over 375 of the largest employers in the United States. Collectively, their companies provide health care coverage to over 20 million employees and dependents in the United States. The American Health Policy Institute, a division of the Association, serves to examine the challenges employers face in providing health care to their employees and recommends policy solutions to promote affordable, high-quality, employer-based health care.

To increase competition and reduce drug prices in the pharmacy supply-chain the Association recommends Congress:

- **Require robust and complete PBM reporting every three months.** Employers need to know what they are paying to provide drug benefits, including the fees, rebates, and other revenue PBMs receive from manufacturers and other third parties, including more transparency into PBM-owned pharmacies, group purchasing organizations (GPOs), rebate aggregators and other entities in the supply chain under common ownership and/or control. Moreover, annual reporting is not sufficient enough for employers and researchers to identify and understand all of the misaligned incentives that are in the pharmacy supply-chain black box.
- **Independent audits.** Employers must be able to rely on independent outside experts of their choosing to help audit PBM services, any related entities, and their contracts.

- **Enable purchasers to accept or reject spread pricing** by pharmacy benefit managers, health plans, providers, and other intermediaries. This policy should apply to drugs administered directly by providers and sold in the pharmacy setting.
- **Require 100% pass-through of rebates, discounts, fees, and other payments from drug manufacturers to employer plans.** When a drug manufacturer remits these kinds of payments to a PBM, they should be considered plan assets, and should be used to reduce the cost of the employer plan for all plan beneficiaries. Often times these payments are given creative names or purposes and are channeled through new intermediaries (such as "aggregators" or offshore "group purchasing organizations"), and never accrue to the benefit of plan participants.
- **Eliminate "patent evergreening" and other "patent thickets"** to ensure that branded products will face competition from generic drugs and biosimilars in line with the intent of current laws.
- **Prevent first-to-file generic drug applicants from blocking,** beyond a 180-day exclusivity period, the entrance of subsequent generic drugs to the market.
- **Reduce citizens petition abuse** by giving the FDA additional guidance on denying petitions submitted for the purpose of delaying generic approval.
- **Require branded biologic companies** to publicly list drug patents they can reasonably defend.

The Association is strongly opposed to legislation that would limit the ability of employers to manage their drug costs including restrictions on step therapy (S. 652) and generic substitution.

Regarding the anti-competitive practices of health care providers, it is not uncommon for providers with significant market share to require employer plans and carriers to contract with all affiliated facilities and prevent plans from educating plan participants about the lower-cost, higher-quality care options they may have available to them. These anti-competitive contract terms are often referred to as "all-or-nothing," "anti-steering," "anti-tiering" and "most-favored-nation" contract provisions. These contract provisions can significantly limit employer plan innovation and flexibility to promote access to high-quality lower-cost care. To address this issue, the Association recommends Congress pass the bipartisan Healthy Competition for Better Care Act (H.R. 3120), which was recently reintroduced by Rep. Michelle Steel.

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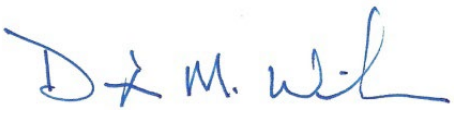
We are pleased the Energy and Commerce Committee is seeking to improve hospital price and ownership transparency, and to increase transparency in the pharmacy supply-chain. We look forward to working with you on these efforts.

Sincerely,



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