

February 8, 2023

The Honorable Dick Durbin  
United States Senate  
Washington, DC 20510

The Honorable Lindsey Graham  
United States Senate  
Washington, DC 20510

Dear Chair Durbin and Ranking Member Graham,

The HR Policy Association and the American Health Policy Institute applaud your work on advancing legislation to reduce prescription drug costs and increase competition in the pharmacy supply-chain. We write to urge you and your colleagues on the Judiciary Committee to vote for the five bills that are scheduled to be considered by the committee on February 9, 2023 (S. 79, S. 113, S. 142, S. 148, and S. 150). These bills are a good first step and we look forward to working with you to craft additional legislation that will increase transparency and accountability in the Pharmacy Benefit Manager industry.

The HR Policy Association is the leading organization representing the chief human resource officers of over 400 of the largest employers in the United States. Collectively, their companies provide health care coverage to over 21 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 the provision of affordable, high-quality, employer-based health care.

Rising drug prices are one of the top three health care cost concerns of HR Policy members. To increase competition and reduce drug prices in the pharmacy supply-chain the Association recommends Congress also:

- 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.
- 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.

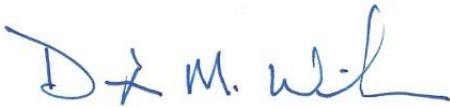
However, the Association is opposed to legislation that would limit the ability of employers to manage their drug costs including restrictions on step therapy and generic substitution.

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. One example of legislation including these provisions is the bipartisan Healthy Competition for Better Care Act (S. 3139, 117<sup>th</sup>). The Association recommends Congress prohibit these anti-competitive contract terms that raise the cost of health care.

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We welcome any opportunity to work with you on these efforts.

Sincerely,



D. Mark Wilson  
President and CEO, American Health Policy Institute  
Vice President, Health & Employment Policy  
HR Policy Association



Margaret Faso  
Director, Health Care Research and Policy  
HR Policy Association, American Health Policy Institute