

May 9, 2023

The Honorable Bernie Sanders
United States Senate
Washington, DC 20510

The Honorable Bill Cassidy
United States Senate
Washington, DC 20510

Dear Chair Sanders and Ranking Member Cassidy,

The HR Policy Association and the American Health Policy Institute applaud your work on advancing legislation to reduce prescription drug costs and increasing competition and transparency in the pharmacy supply-chain. We write to urge you and your colleagues on the HELP Committee to vote for the four bills that are scheduled to be considered by the committee on May 11, 2023 ([S. 1339](#), [S. 1067](#), [S. 1114](#), and [S. 1214](#)). These bipartisan bills are a good first step and we look forward to working with you to strengthen the legislation and craft additional measures that will increase transparency, competition, and accountability in the Pharmacy Benefit Manager 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 the provision of affordable, high-quality, employer-based health care.

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

- **Uphold the essential role ERISA plays for multi-state employers** who want to build an equitable workplace culture by providing uniform and affordable benefits to their employees regardless of where they live. The ability to offer uniform pharmacy benefits is key to this. *The concerns that community pharmacists have with PBMs can and should be addressed without diminishing the important role ERISA plays for geographically dispersed employers.*
- **Apply ERISA's fiduciary standards to PBMs.** Under ERISA, employers are required to be good stewards of the health care benefits they provide to their employees, to act in their best interests, and to minimize costs. It is not unreasonable for PBMs to be held to the same responsibilities, obligations and duties that employers are required to uphold for their health plans.
- **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. 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.

- **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.

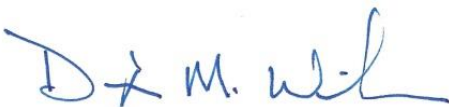
The Association is strongly opposed to legislation that would limit the ability of employers to manage their drug costs including restrictions on step therapy ([S. 652](#)) and generic substitution.

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. One example of legislation including these provisions is the bipartisan [Healthy Competition for Better Care Act](#), which was recently reintroduced by Senators Mike Braun and Tammy Baldwin. The Association recommends Congress prohibit these anti-competitive contract terms that raise the cost of health care.

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We are pleased the HELP Committee is taking a bipartisan approach to this critical issue, which has the potential to increase competition and transparency, and align incentives in the pharmacy supply chain in ways that will lead to more affordable prescription drugs for employees and families. We look forward to working with you on these efforts.

Sincerely,



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