CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
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December 3, 2019

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Democratic Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Leader McConnell, Minority Leader Schumer, Speaker Pelosi and Minority Leader McCarthy:

The U.S. Chamber of Commerce has long advocated in favor of choice, innovation and the ability of private businesses to enter into contracts with payment arrangements they design and prefer, in all aspects of their operations, including health care. Conversely, the Chamber has long fought against policies and proposals that would restrict options, undercut the ability of companies to innovate, and eliminate contractual flexibility.

Many policy proposals intended to address health policy challenges would advance price controls and improperly eliminate choice in ways that would hurt employers and consumers. Among these harmful policy proposals are several ideas being advanced to address the high costs of prescription drugs, including: repealing the cap on mandatory manufacturer rebates in Medicaid; prohibiting the ability of businesses to include spread pricing arrangements in private commercial contracts; and imposing an inflation penalty in Medicare Part D and Part B on manufacturers. The Chamber strongly opposes these proposals.

Medicaid Rebate Cap

Currently, manufacturers' mandatory rebates in Medicaid are capped at 100% of the average manufacturer price (AMP), which in many instances results in manufacturers offering products to states at no charge. AMP is the average price paid by retail pharmacy and wholesalers. Both the Administration and Congress are exploring proposals that would remove this Medicaid rebate cap, which would result in manufacturers *paying* states when Medicaid patients use certain products. It is unreasonable and unfair to require a company to pay the federal government in order to offer its product to beneficiaries enrolled in a public program. Doing so disregards the value of developing medicines that improve and extend life.

AMP Cap removal is inconsistent with the intent of Medicaid law; the AMP cap was enacted to keep the Medicaid price from falling below zero. This change would also lead to higher list prices as companies would be forced to recoup losses in one segment of the market by raising prices in other segments to cross-subsidized the underpriced products.

Spread Pricing

Risk mitigation pricing (also referred to as spread pricing) provides employers a definitive price for prescription drug benefit payments to pharmacies, and transfers the risks associated with daily fluctuations in drug prices onto the Pharmacy Benefit Manager (PBM). This ability to include spread pricing as part of a contractual agreement is highly valued by many employers[1] and plan sponsors and incentivizes these PBMs to push pharmacies to reduce their acquisition costs. This is a contracting term that employers demand, bringing much needed pricing predictability. The Chamber opposes proposals that would eliminate and prohibit the ability of entities to include such a provision in private contracts.

Inflation Penalty

Legislators and the Administration are both contemplating proposals to impose an inflationary rebate penalty on Medicare Part D and Part B. In a proposal under consideration by the Senate Finance Committee, a manufacturer would be required to pay a penalty in the form of a rebate if the relevant prices (Average Sales Price in Part B and list price in Part D) of a medicine increases on their brand name products at a rate that exceed general inflation. In both cases, the Secretary of HHS is empowered to impose a civil monetary penalty of 125 percent of the required rebate amount. The package actually sets up an additional, more extreme remedy in the Part B provision: it states that the Secretary would ensure that "no payment under Medicare Part B is available for a drug" if its manufacturer failed to pay the required penalty, in effect using the strong stick of limiting access to the drug through Part B to more strongly encourage companies to obey the provision.

These proposals may not *directly* set prices, but indirect price controls would be the eventual consequence. While supporters may argue that drug prices in the Part D program would continue to be set without government interference, this assertion rings hollow given that the Secretary of Health and Human Services would separately exact penalties against drug companies that increase their list prices. The program was structured and works because it facilitates negotiation between pharmacy benefit managers (PBMs), pharmaceutical manufacturers, and pharmacies. The Chamber opposes efforts to insert the government into these negotiations.

Conclusion

[1] Over a third of respondents (n=239) chose traditional spread pricing contracts with their PBMs in 2018. Smaller employers (43 percent) were more likely to report spread pricing than large employers (29 percent). Pharmacy Benefit Management Institute. 2018 *Trends in Drug Benefit Design*, Plano, TX PBMI. Available from www.pbmi.com/benefitdesignrpts

As Congress moves to develop and enact an end-of-the-year healthcare package, the Chamber urges you to oppose policy changes that would reduce choice and flexibility. The Chamber is very concerned that repealing the Medicaid rebate cap and prohibiting spread pricing would not only fail to advance the goal of lowering drug prices but would further restrict access to medication and valued contractual certainty.

Sincerely,

Neil L. Bradley